OFFICIAL CODE OF GEORGIA

ANNOTATED

VOLUME 13A

Title 15. Courts

(Chapters 12 to 24)

2015 Edition

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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission

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The Editorial Staff of LexisNexis®

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Volume 13A

2015 Edition

Title 15. Courts

(Chapters 12 through 24)

Including Acts of the 2015 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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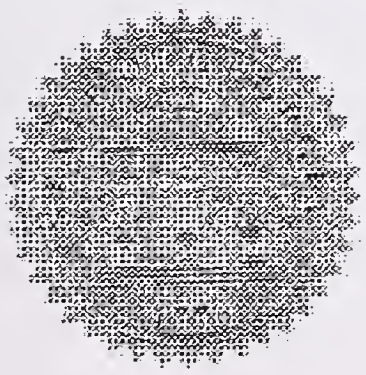


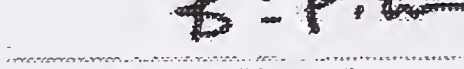
OFFICE OF SECRETARY OF STATE

I, Brian P. Kemp, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as same appear of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 10th day of July, in the year of our Lord Two Thousand and Fifteen and of the Independence of the United States of America the Two Hundred and Fortieth.





Brian P. Kemp, Secretary of State

(Pub.41805)

Preface

This volume, along with the 2015 edition of Volume 13, replaces the 2014 edition of Volume 13 of the Official Code of Georgia Annotated. The 2014 Volume 13 may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 15, Chapters 12 through 24, by the General Assembly through the 2015 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated. This volume retains amendment notes and effective date notes for Acts passed during the 2013, 2014 and 2015 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2013 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Cross references. — Criminal Justice Coordinating Council, § 35-6A-1 et seq. Establishment of county law libraries, § 36-15-1 et seq. Court-martial jurisdiction, § 38-2-370 et seq. Designation of courts which possess jurisdiction over traffic offenses, and procedure in such courts, § 40-13-1 et seq. Indictment and punishment of judge of probate court for malpractice, partiality, conduct unbecoming office, and other offenses, § 45-11-4.

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Am. Jur. Trials. — Judicial Technology in the Courts, 44 Am. Jur. Trials 1.

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Cross references. — Trial by jury generally, Ga. Const. 1983, Art. I, Sec. I, Para. XI and Ga. Const. 1983, Art. VI, Sec. I, Para. IV. Waiver of trial by jury, § 5-3-30. Right to jury trial, § 9-11-38. Embracery, § 16-10-91. Expression of approval or disapproval of jury verdict by judge, § 17-9-22 et seq. Jury leave for teachers, § 20-2-870. Jury exemption for officers and enlisted personnel, § 38-2-276. Jury trial in foreclosure proceedings, § 44-14-186.

Law reviews. — For article advocating reforms to improve the jury mentally and morally, see 5 Ga. B.J. 38 (1942). For article discussing developments in Georgia criminal law in 1976-1977, see 29 Mercer L. Rev. 55 (1977). For article, "Justice and Juror," see 20 Ga. L. Rev. 257 (1986). For article, "American Women Jurors: A Selected Bibliography," see 20 Ga. L. Rev. 299 (1986). For article, "Voir Dire in the #LOL Society: Jury Selection Needs Drastic Updates to Remain Relevant in the Digital Age," see 47 J. Marshall L. Rev. 459 (2014).

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Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 1 et seq.

Am. Jur. Proof of Facts. — Discrimination in Jury Selection — Systematic Exclusion or Underrepresentation of Identifiable Group, 9 POF2d 407.

Am. Jur. Trials. — Jury or Nonjury Trial — A Defense Viewpoint, 5 Am. Jur. Trials 128.

Selecting the Jury — Plaintiff's View, 5 Am. Jur. Trials 143.

Selecting the Jury — Defense View, 5 Am. Jur. Trials 247.

Instructing the Jury — Pattern Instructions, 6 Am. Jur. Trials 923.

Use of Jury Consultant in Civil Cases, 49 Am. Jur. Trials 407.

C.J.S. — 50A C.J.S., Juries, § 1.

ALR. — Deafness of juror as ground for impeaching verdict, or securing new trial or reversal on appeal, 38 ALR4th 1170.

Jury trial waiver as binding on later state civil trial, 48 ALR4th 747.

Stranger's alleged communication with juror, other than threat of violence, as prejudicial in federal criminal prosecution, 131 ALR Fed. 465.

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Challenges for Cause in Jury Selection Process, 58 POF3d 395.

15-12-1. Definitions.

As used in this chapter, the term:

(1) "Array" means the body of persons subject to voir dire from which the final jury and alternate jurors are selected.

(2) "Choose" or "chosen" means the act of randomly selecting potential jurors from the county master jury list in a manner that does not deliberately or systematically exclude identifiable and distinct groups from the venire.

(3) "Clerk" means the clerk of the superior court or a jury clerk if one is appointed pursuant to subsection (a) of Code Section 15-12-11 or Code Section 15-12-12.

(4) "Council" means The Council of Superior Court Clerks of Georgia.

(5) "County master jury list" means a list compiled by the council of names of persons, including their addresses, city of residence, dates of birth, and gender, eligible for trial or grand jury service.

(6) "Defer" means a postponement of a person's jury service until a later date.

(7) "Excuse" means the grant of a person's request for temporary exemption from jury service.

(8) "Inactivate" means removing a person's name and identifying information who has been identified on the county master jury list as a person who is permanently prevented from being chosen as a trial or grand juror because such person is statutorily ineligible or incompetent to serve as a juror.

(9) "State-wide master jury list" means a comprehensive master list that identifies every person of this state who can be determined to be prima facie qualified to serve as a trial or grand juror.

(10) "Venire" means the list of persons summoned to serve as trial or grand jurors for a particular term of court. (Code 1981, § 15-12-1, enacted by Ga. L. 2011, p. 59, § 1-5/HB 415; Ga. L. 2014, p. 451, § 3/HB 776; Ga. L. 2014, p. 862, § 1/HB 1078.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, substituted "Code Section 15-12-12" for "subsection (b) of Code Section 15-12-23" in paragraph (3); substituted "The Council" for "the Council" in paragraph (4); deleted former paragraph (9), which read: "'Jury commissioner' means a member of a county board of jury commissioners."; and redesignated former paragraphs (10) and (11) as present paragraphs (9) and (10), respectively. The second 2014 amendment, effective April 29, 2014, inserted "trial or grand" near the end of paragraphs (5), (10) (now paragraph (9)) and (11) (now paragraph (10)).

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Ga. L. 2011, p. 59, § 1-5/HB 415, effective July 1, 2011, redesignated former Code Section 15-12-1 as present Code Section 15-12-1.1.

15-12-1.1. Exemptions from jury duty.

(a)(1) Any person who shows that he or she will be engaged during his or her term of jury duty as a trial or grand juror in work necessary to the public health, safety, or good order or who shows other good cause why he or she should be exempt from jury duty may have his or her jury service deferred or excused by the judge of the court to which he or she has been summoned or by some other person who has been duly appointed by order of the chief judge to excuse jurors. Such a person may exercise such authority only after the establishment by court order of guidelines governing excuses. Any order of appointment shall provide that, except for permanently mentally or physically disabled persons, all excuses shall be deferred to a date and time certain within that term or the next succeeding term or shall be deferred as set forth in the court order. It shall be the duty of the court to provide affidavits for the purpose of requesting a deferral of or excusal from jury service pursuant to this subsection.

(2) Notwithstanding paragraph (1) of this subsection, any person who is a full-time student at a college, university, vocational school, or other postsecondary school who, during the period of time the student is enrolled and taking classes or exams, requests to be excused or deferred from jury duty shall be excused or deferred from jury duty.

(3) Notwithstanding paragraph (1) of this subsection, any person who is the primary caregiver having active care and custody of a child six years of age or younger, who executes an affidavit on a form provided by the court stating that such person is the primary caregiver having active care and custody of a child six years of age or younger and stating that such person has no reasonably available alternative child care, and who requests to be excused or deferred shall be excused or deferred from jury duty.

(4) Notwithstanding paragraph (1) of this subsection, any person who is a primary teacher in a home study program as defined in subsection (c) of Code Section 20-2-690 who, during the period of time the person is teaching, requests to be excused or deferred from jury duty and executes an affidavit on a form provided by the court stating that such person is the primary teacher in a home study program and stating that such person has no reasonably available alternative for the child or children in the home study program shall be excused or deferred from jury duty.

(5) Notwithstanding paragraph (1) of this subsection, any person who is the primary unpaid caregiver for a person over the age of six; who executes an affidavit on a form provided by the court stating that such primary caregiver is responsible for the care of a person with such physical or cognitive limitations that he or she is unable to care for himself or herself and cannot be left unattended and that the primary caregiver has no reasonably available alternative to provide for the care; and who requests to be excused or deferred shall be excused or deferred from jury duty. Any person seeking the exemption shall furnish to the court, in addition to the aforementioned affidavit, a statement of a physician, or other medical provider, supporting the affidavit's statements related to the medical condition of the person with physical or cognitive limitations.

(b) Any person who is 70 years of age or older shall be entitled to request that the clerk excuse such person from jury service in the county. Upon such request, the clerk shall inactivate such person. The request for excusal shall be made to the clerk in writing and shall be accompanied by an affidavit providing the person's name, age, and such other information as the clerk may require. The clerk shall make available affidavit forms for the purposes of this subsection.

(c)(1) As used in this subsection, the term:

(A) "Ordered military duty" means any military duty performed in the service of the state or of the United States, including, but not limited to, attendance at any service school or schools conducted by the armed forces of the United States which requires a service member to be at least 50 miles from his or her home.

(B) "Service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard who was on ordered federal duty for a period of 90 days or longer.

(2) Any service member on ordered military duty or the spouse of any such service member who requests to be excused or deferred shall be excused or deferred from jury duty upon presentation of a copy of a valid military identification card and execution of an affidavit in the form required by the court for deferral or excusal under this paragraph.

(d) The court shall notify the clerk of its excuse or deferment of a person's jury service. (Laws 1843, Cobb's 1851 Digest, p. 1074; Code 1863, § 3845; Code 1868, § 3865; Ga. L. 1871-72, p. 29, §§ 1-3; Ga. L. 1872, p. 33, § 1; Ga. L. 1873, p. 31, § 1; Code 1873, § 3939; Ga. L. 1874, p. 46, § 1; Ga. L. 1874, p. 91, § 4; Ga. L. 1875, p. 96, § 1; Ga. L. 1875, p. 98, § 1; Ga. L. 1876, p. 16, § 1; Ga. L. 1878-79, p. 171, § 1; Ga. L. 1880-81, p. 112, § 1; Ga. L. 1880-81, p. 114, § 1; Code 1882, § 3939; Ga. L. 1884-85, p. 74, § 12; Ga. L. 1884-85, p. 94, § 1; Ga. L. 1884-85, p. 102, § 1; Ga. L. 1890-91, p. 219, § 1; Penal Code 1895, § 867; Ga. L. 1899, p. 69, § 1; Ga. L. 1905, p. 105, § 1; Penal Code 1910, § 871; Code 1933, § 59-112; Ga. L. 1953, Nov.-Dec. Sess., p. 284, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 328, § 1; Ga. L. 1967, p. 725, §§ 1, 2; Ga. L. 1975, p. 779, § 1; Ga. L. 1978, p. 221, §§ 1, 2; Ga. L. 1978, p. 1379, § 1; Ga. L. 1984, p. 1697, § 1; Ga. L. 1985, p. 512, § 1; Ga. L. 2000, p. 1682, § 1; Ga. L. 2005, p. 213, § 1/SB 258; Ga. L. 2006, p. 124, § 1/HB 376; Ga. L. 2007, p. 47, § 15/SB 103; Ga. L. 2008, p. 343, § 1/HB 188; Code 1981, § 15-12-1.1, as redesignated by Ga. L. 2011, p. 59, § 1-5/HB 415; Ga. L. 2014, p. 451, § 4/HB 776; Ga. L. 2014, p. 862, § 2/HB 1078.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in subsection (b), substituted "clerk" for "board of jury commissioners" in the second sentence, in the third sentence, deleted "board or" preceding "clerk in writing" and substituted "clerk may" for "board may" near the end, and substituted "clerk" for "board of jury commissioners of each county" in the last sentence. The second 2014 amendment, effective April 29, 2014, inserted "as a trial or grand juror" in the first sentence of paragraph (a)(1).

History of Code section. — The language of this Code section was derived in part from the decision in Stater v. State, 141 Ga. 82, 80 S.E. 850 (1913).

Cross references. — Discrimination against employee for attending a judicial proceeding in response to a court order or process, § 34-1-3. Exemption from jury duty for officers and enlisted personnel of organized militia, § 38-2-276. Authority

of probate courts to enact local rules, Uniform Rules for the Probate Courts, Rule 1.2.

Editor's notes. — This Code section formerly pertained to exemptions from jury duty in counties which have established a plan for electronic or mechanical selection of jurors. The former Code section was based on Code 1933, § 59-112.1, enacted by Ga. L. 1981, p. 652, § 1, and was repealed by Ga. L. 1984, p. 1167, § 2, effective April 7, 1984.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For article surveying developments in Georgia criminal law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 95 (1981).

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations taken from cases decided prior to the 1984, 2011, and 2014 amendments, which rewrote this Code section, are included in the annotations for this Code section.

O.C.G.A. § 15-12-1 constitutional. — This section does not violate U.S. Const., amend. 14. Rawlins v. Georgia, 201 U.S. 638, 26 S. Ct. 560, 50 L. Ed. 899 (1906).

There is nothing in U.S. Const., amend. 14 which prevents a state from excluding and exempting from jury duty certain classes on the bona fide ground that it is for the good of the community that their regular work should not be interrupted; provided, the exclusion is not the result of race or class prejudice. Allen v. State, 110 Ga. App. 56, 137 S.E.2d 711 (1964).

This section is not unconstitutional or violative of U.S. Const., amends. 5, 6, and 14 as not drawing juries from the community at large by excluding therefrom arbitrarily and without reason certain classes of citizens of high intelligence and mentality, certain classes of persons such as police and law enforcement officers, court personnel and lawyers, municipal firefighters, medical and dental personnel and pharmacists in the active practice of their profession, and persons over 65 years of age. Robinson v. State, 225 Ga. 167, 167 S.E.2d 158 (1969).

This section, authorizing the trial judge to excuse a juror who is a housewife with children 14 years of age or under, does not violate U.S. Const., amends. 6 and 14, for a state may have an important interest in assuring that those members of the family responsible for the care of children are available to do so. Willis v. State, 243 Ga. 185, 253 S.E.2d 70, cert. denied, 444 U.S. 885, 100 S. Ct. 178, 62 L. Ed. 2d 116 (1979).

States are free to grant exemptions from jury service to individuals in case of special hardship or incapacity and to those engaged in particular occupations, the uninterrupted performance of which is critical to the community's welfare. Franklin v. State, 245 Ga. 141, 263 S.E.2d 666, cert. denied, 447 U.S. 930, 100 S. Ct. 3029, 65 L. Ed. 2d 1124 (1980).

Superior courts can maintain their own rules. — Ga. Unif. Super. Ct. R. 1.2 provided that the repeal of the local rules notwithstanding, each superior court could retain or adopt without specific Supreme Court approval an order establishing guidelines governing excuses from jury duty pursuant to O.C.G.A. § 15-12-1. Therefore, a court administrator could excuse jurors from grand jury service in accordance with county guidelines and did not err in accepting excuses without affidavits. Humphreys v. State, 287 Ga. 63, 694 S.E.2d 316, cert. denied, 131 S. Ct.

599, 178 L. Ed. 2d 438 (2010).

Challenge to array as unrepresentative not valid. — Challenge to the array on the basis that this section exempts numerous persons from jury duty and thereby deprives a defendant of a jury representing a cross-section of the community and the impartiality to which the defendant is entitled under U.S. Const., amends. 6 and 14 is not valid. Morris v. State, 228 Ga. 39, 184 S.E.2d 82 (1971), cert. denied and appeal dismissed, 405 U.S. 1050, 92 S. Ct. 1511, 31 L. Ed. 2d 786 (1972).

Jury statutes deemed directory. — Statutes regulating the selection, drawing, and summoning of jurors are intended to distribute jury duties among the citizens of the county, provide for rotation in jury service, and are merely directory. Hampton v. State, 158 Ga. App. 324, 280 S.E.2d 158 (1981).

Statutes regulating the selection, drawing, and summoning of jurors are intended to distribute jury duties among the citizens of the county, provide for rotation in jury service, and are merely directory; these statutes are not intended to provide parties with an impartial jury. Bailey v. State, 209 Ga. App. 390, 433 S.E.2d 610 (1993), overruled on other grounds, Walker v. State, 290 Ga. 696, 723 S.E.2d 894 (2012).

Section is for benefit of those in classes mentioned and allows them to express a willingness to serve. Smith v. State, 225 Ga. 328, 168 S.E.2d 587 (1969), cert. denied, 396 U.S. 1045, 90 S. Ct. 695, 24 L. Ed. 2d 689 (1970).

Code section does not disqualify classes there mentioned, but merely grants the classes the privilege of being left out of the jury box unless the classes signify a willingness to serve. Smith v. State, 225 Ga. 328, 168 S.E.2d 587 (1969), cert. denied, 396 U.S. 1045, 90 S. Ct. 695, 24 L. Ed. 2d 689 (1970).

Persons exempted under this Code section are not ineligible to serve as jurors and litigants must accept them as jurors if they decide to serve, unless they are excused or rejected on one or more of the grounds provided by law. Smith v. State, 225 Ga. 328, 168 S.E.2d 587 (1969), cert. denied, 396 U.S. 1045, 90 S. Ct. 695, 24 L. Ed. 2d 689 (1970).

Exemptions established by this section are not absolute, but are personal privileges. Arkwright v. Smith, 224 Ga. 764, 164 S.E.2d 796 (1968).

Exemptions contained in this section are not absolute or required exemptions; and any person included in an exempt class may request that the exemption be made inapplicable to that person. Webb v. Board of Tax Assessors, 235 Ga. 790, 221 S.E.2d 810 (1976).

Exemptions to be carefully scrutinized. — Low priority should be given all classes of persons exempted from jury duty by this section. Exemption should be carefully scrutinized and not recognized when solicited. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973).

Exemptions do not mean juries not representative. — Mere automatic exemption of certain citizens who have the right to serve if they desire does not result in the jury lists chosen not being representative because chosen from a restricted group of citizens. Robinson v. State, 225 Ga. 167, 167 S.E.2d 158 (1969).

Trial court must exercise discretion in excusing women with children from jury duty. Barrow v. State, 239 Ga. 162, 236 S.E.2d 257 (1977).

General policy of excusing veniremen upon request. — When no violation of O.C.G.A. § 15-12-1 is shown and when the jury panels which were put upon the accused contained substantially more veniremen than required by O.C.G.A. § 15-12-160, there was no denial of a fair trial despite the trial court's general policy of excusing veniremen upon request. Hall v. State, 254 Ga. 272, 328 S.E.2d 719 (1985).

Ruling by a different judge presiding over a separate proceeding that related to the ability of potential jurors to serve did not constitute an error by the trial court in allowing, prior to the selection of the jury array, an unknown number of potential jurors to be excused from service without defendant's participation. Pruitt v. State, 279 Ga. 140, 611 S.E.2d 47, cert. denied, 546 U.S. 866, 126 S. Ct. 165, 163 L. Ed. 2d 152 (2005).

Authority of court clerk to excuse jurors. — Trial court properly denied the

General Consideration (Cont'd)

defendant's motion to start the trial with a new panel of jurors based on the defendant's contention that the trial court clerk lacked authority to excuse jurors from duty and that the clerk excused jurors for reasons not recognized as valid under O.C.G.A. § 15-12-1 as the court clerk had the authority to excuse or defer jurors pursuant to a standing order of the trial court and there was absolutely no evidence that the excusals or deferrals were allowed in such a manner as to alter, deliberately or inadvertently, the representative nature of the jury lists. Further, the defendant had no vested interest in having any particular juror serve; defendant was only entitled to a legal and impartial jury. English v. State, 290 Ga. App. 378, 659 S.E.2d 783 (2008).

Waiver of right to object to recusal on appeal. — By failing to object to excusals of prospective jurors for hardship, a defendant waived the right to complain of the excusals on appeal. Walker v. State, 282 Ga. 774, 653 S.E.2d 439 (2007), cert. denied, 129 S. Ct. 481, 172 L.Ed.2d 344 (2008); overruled on other grounds, No. S10P1859, 2011 Ga. LEXIS 267 (Ga. 2011).

Excusals held proper. — Habeas court erred in granting the petitioner a writ of habeas corpus on the claim that appellate counsel had rendered ineffective assistance because the petitioner failed to show how the outcome of the appeal could have been different if the transcript of the hearing on the motion to dismiss the jury panel had been available for the court of appeals to consider; the trial court did not err in denying the motion to dismiss because neither the transcript or any other evidence showed that the jury excusals or deferrals were allowed in such a manner as to alter, deliberately or inadvertently, the representative nature of the jury lists. Walker v. Hagins, 290 Ga. 512, 722 S.E.2d 725 (2012).

Cited in Smith v. State, 11 Ga. 89, 74 S.E. 711 (1912); Baskin v. State, 43 Ga. App. 760, 160 S.E. 539 (1931); Watkins v. State, 199 Ga. 81, 33 S.E.2d 325 (1945); Reece v. State, 208 Ga. 165, 66 S.E.2d 133 (1951); Cash v. State, 224 Ga. 798, 164 S.E.2d 558 (1968); Simmons v. Jones, 478 F.2d 321 (5th Cir. 1973); Houser v. State, 234 Ga. 209, 214 S.E.2d 893 (1975); Carney v. State, 134 Ga. App. 816, 216 S.E.2d 617 (1975); Jones v. State, 137 Ga. App. 612, 224 S.E.2d 473 (1976); Gibson v. State, 236 Ga. 874, 226 S.E.2d 63 (1976); Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir. 1976); Robinson v. Kimbrough, 558 F.2d 773 (5th Cir. 1977); Cochran v. State, 151 Ga. App. 478, 260 S.E.2d 391 (1979); Robinson v. Kimbrough, 620 F.2d 468 (5th Cir. 1980); Allen v. State, 158 Ga. App. 691, 282 S.E.2d 126 (1981); Robinson v. Kimbrough, 652 F.2d 458 (5th Cir. 1981); West v. State, 252 Ga. 156, 313 S.E.2d 67 (1984); Graham v. State, 171 Ga. App. 242, 319 S.E.2d 484 (1984); Ingram v. State, 253 Ga. 622, 323 S.E.2d 801 (1984); Walker v. State, 254 Ga. 149, 327 S.E.2d 475 (1985); Pelligrini v. State, 174 Ga. App. 84, 329 S.E.2d 186 (1985); Riley v. State, 174 Ga. App. 607, 330 S.E.2d 808 (1985); Melton v. State, 175 Ga. App. 472, 333 S.E.2d 682 (1985); Lumpkin v. State, 255 Ga. 363, 338 S.E.2d 431 (1986); Cargill v. State, 255 Ga. 616, 340 S.E.2d 891 (1986); Skipper v. State, 257 Ga. 802, 364 S.E.2d 835 (1988); Blankenship v. State, 258 Ga. 43, 365 S.E.2d 265 (1988); Haugen v. Henry County, 277 Ga. 743, 594 S.E.2d 324; Harper v. State, 283 Ga. 102, 657 S.E.2d 213 (2008).

Police Officers

Challenge to police officer must be granted. — If police officers eligible for jury duty are challenged for cause in a criminal case, such a request must be granted. Hutcheson v. State, 246 Ga. 13, 268 S.E.2d 643 (1980).

O.C.G.A. § 15-12-1, as amended in 1984, removes the previously existing exemption of police officers from being called for jury duty, but, if a police officer is challenged for cause in a criminal case, the challenge must be granted and the officer will not be seated as a juror in that proceeding. King v. State, 173 Ga. App. 838, 328 S.E.2d 740 (1985).

Part-time city police officer and honorary deputy sheriff is exempt from jury service, but not disqualified. Corvair Furn. Mfg. Co. v. Bull, 125 Ga.

App. 141, 186 S.E.2d 559 (1971).

Other

Delegation of power to excuse jurors. — If the clerk delegated the duty of handling excusals to the court administrator and the chief deputy clerk, the court administrator (who excused some veniremen) did not have such power since the administrator was not authorized expressly by the chief judge to excuse jurors, but there was no such disregard of the essential and substantial provisions of O.C.G.A. § 15-12-1 as would vitiate the arrays. Hendrick v. State, 257 Ga. 17, 354 S.E.2d 433 (1987).

Physical disability. — Under O.C.G.A. § 15-12-1(a)(1), a person may be excused from jury service if he or she shows good cause, which may include physical disability. Sallie v. State, 276 Ga. 506, 578 S.E.2d 444, cert. denied, 540 U.S. 902, 124 S. Ct. 251, 157 L. Ed. 2d 185 (2003).

Trial court did not err in excusing for hardship a potential juror on the bases that the potential juror was taking morphine twice daily because of back surgery that would also require the potential juror to stand up from time to time, had been diagnosed with manic depression and was on medication for that condition, and would not be able to concentrate on one thing for long periods of time. Stokes v. State, 281 Ga. 875, 644 S.E.2d 116 (2007).

Defendant cannot complain of under-representation of older citizens, as age is not a recognized class for the purposes of grand and traverse jury representation. Cobb v. State, 244 Ga. 344, 260 S.E.2d 60 (1979).

Older persons must request jury service. — It is not permissible to place persons who are 65 years of age or older in jury boxes unless those persons shall make request therefor in writing to the jury commissioners of the county of their residence. Cobb v. State, 244 Ga. 344, 260 S.E.2d 60 (1979).

Failure to include name nonsubstantial error. — There was not such a disregard of the essential and substantial provisions of O.C.G.A. § 15-12-1 as would vitiate the jury arrays, although the names of two persons over 65 who requested that their names be included on the jury list were not placed in the jury box. Quinn v. State, 171 Ga. App. 590, 320 S.E.2d 827 (1984).

Older persons not disqualified. — Fact that a jury box contains names of persons 65 years or older who have not requested in writing to serve on a jury is not grounds for the defendant to object since this fact alone does not work the disqualification of a juror. Smith v. State, 225 Ga. 328, 168 S.E.2d 587 (1969), cert. denied, 396 U.S. 1045, 90 S. Ct. 695, 24 L. Ed. 2d 689 (1970).

College students. — While a blanket, indiscriminate excusal of registered college students is incompatible with Georgia law and with the need to draw juries from a fair cross-section of the community, a trial court has the discretion to excuse a student from jury duty based on a determination that service would impose a special and undue hardship on the individual student. Thornton v. State, 264 Ga. 563, 449 S.E.2d 98 (1994); Holsey v. State, 271 Ga. 856, 524 S.E.2d 473 (1999), cert. denied, 530 U.S. 1246, 120 S. Ct. 2695, 147 L. Ed. 2d 966 (2000).

Students from schools outside county. — Pre-trial excusal for "other good cause" of prospective jurors who were college students enrolled in schools outside the county was proper. Hall v. State, 261 Ga. 778, 415 S.E.2d 158 (1991), cert. denied, 505 U.S. 1205, 112 S. Ct. 2993, 120 L. Ed. 2d 870 (1992).

Death penalty. — Juror's age and responsibilities as organizer of a one-time reunion event were good cause for excuse under O.C.G.A. § 15-12-1; because these factors constituted good cause, the juror's opposition to the death penalty was irrelevant and the defendant could not challenge the juror's dismissal on such grounds. McClain v. State, 267 Ga. 378, 477 S.E.2d 814 (1996), cert. denied, 521 U.S. 1106, 118 S. Ct. 2485, 138 L. Ed. 2d 993 (1997).

Trial court's failure to investigate proffered medical excuses of those seeking to be excused from jury service in a death penalty case was an abuse of discretion and was an error affecting the jury array composition; thus, a new trial was required. Yates v. State, 274 Ga. 312, 553 S.E.2d 563 (2001).

Other (Cont'd)

Clerk's excusal of jurors from a death penalty case without a written order authorizing this action was an abuse of the trial court's discretion. Yates v. State, 274 Ga. 312, 553 S.E.2d 563 (2001).

Argument by a defendant in a death penalty case claimed that the amount paid to jurors was insufficient to enable wage earners and people with small children to serve on the jury failed; defendant did not object to the excusal of any particular prospective juror for hardship reasons pursuant to O.C.G.A. § 15-12-1(a), and the decision to excuse a potential juror for hardship reasons was left to the sound discretion of the trial court. Lewis v. State, 279 Ga. 756, 620 S.E.2d 778 (2005), cert. denied, 547 U.S. 1116, 126 S. Ct. 1917, 164 L. Ed. 2d 671 (2006).

Excusals before voir dire held proper. — Trial court properly excused two prospective jurors before voir dire under O.C.G.A. § 15-12-1 when one juror was a college student who was in the process of taking final exams and the other juror told the trial judge that the judge had recently sentenced a relation of the juror's to 50 years in prison and that the juror would not be able to be fair to anyone involved in the case. Jackson v. State, 288 Ga. App. 339, 654 S.E.2d 137 (2007), cert. denied, 2008 Ga. LEXIS 332 (Ga. 2008).

Evidence

Burden is upon defendant challenging array of jury to establish prima facie case that there has been systematic exclusion of a distinct class of citizens. Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 (1976).

In order to show systematic exclusion of a distinct class of citizens, the defendant must demonstrate sufficiently to establish a prima facie case that: (1) the sources from which the jury list was drawn are tainted in that they provide the opportunity for discrimination; and (2) that use of these sources resulted in a substantial disparity between the percentages of the separate class on the jury list and in the population as a whole. Implicit in these requirements is that the defendant has the burden of showing that the group the defendant seeks to prove has been systematically excluded constitutes a distinct and separate class of citizens. Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 (1976).

Evidence insufficient to show purposeful exclusion. — Evidence which merely shows the number of women in a county as compared to the total population, and which does not show the number with children under 14 years of age or the number who requested in writing that they not be included in the list of jurors permitted by this section, is not sufficient to show a purposeful exclusion of women from the jury. McHan v. State, 232 Ga. 470, 207 S.E.2d 457 (1974).

Sheriff's excusal of jurors violates defendant's rights. — Excusal of five prospective jurors by the sheriff, as the chief law enforcement officer in the county and as a direct participant in the trial, was a violation of the integrity of the jury selection process, and constitutes an alteration of the array of traverse jurors to such extent as to deprive the defendant of the defendant's proportional share of peremptory strikes. Joyner v. State, 251 Ga. 84, 303 S.E.2d 106 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, annotations taken from Attorney General opinions rendered prior to the 1984 and 2011 amendments, which rewrote this Code section, are included in the annotations for this Code section.

Former Code 1933, § 86-701 (see now O.C.G.A. § 38-2-276) was in conflict with former Code 1933, § 59-112 (see now O.C.G.A. § 15-12-1) and was therefore repealed insofar as the statute purported to grant specific exemptions from jury duty to members of the organized militia. 1967 Op. Att'y Gen. No. 67-296.

Older persons automatically exempted. — This section, in dealing with

performance of jury duty by persons 65 years of age or older, does not remove an automatic exemption from jury duty for such persons. 1978 Op. Att'y Gen. No. U78-27.

Members of county board of education are eligible for service on traverse jury in civil and criminal matters. 1960-61 Op. Att'y Gen. p. 150.

Federal employees are not exempt from jury duty. 1954-56 Op. Att'y Gen. p. 85.

Teacher's salary may be precluded. — State Board of Education and local boards of education may promulgate regulations to preclude the payment of a teacher's regular salary for a period of time spent on jury duty. 1974 Op. Att'y Gen. No. 74-52.

O.C.G.A. § 15-12-1(a) gives broad discretion to a trial judge to excuse prospective jurors when the court finds that, during the term of court, the juror will be engaged in work necessary to the public health, safety, or good order, or who shows other good cause, which authority may be delegated to some other person appointed by the order of the chief judge after the establishment by court order of guidelines governing excuses. 1986 Op. Att'y Gen. No. U86-4.

Deferral of jurors. — Except for permanently disabled persons, all other prospective jurors who meet the minimum legal requirement for excusal shall be deferred to a date and time certain within that term or the next succeeding term or shall be deferred as set forth in the order. 1986 Op. Att'y Gen. No. U86-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 157 et seq.

C.J.S. — 50A C.J.S., Juries, §§ 302 et seq., 385.

ALR. — Exclusion of attorneys from jury list in criminal cases, 32 ALR2d 890.

Religious belief as ground for exemption or excuse from jury service, 2 ALR3d 1392.

Law enforcement officers as qualified jurors in criminal cases, 72 ALR3d 895.

Former law enforcement officers as qualified jurors in criminal cases, 72 ALR3d 958.

Excusing, on account of public, charitable, or educational employment, one qualified and not specifically exempted as juror in state criminal case as ground of complaint by accused, 99 ALR3d 1261.

Jury: visual impairment as disqualification, 48 ALR4th 1154.

Jury: who is lawyer or attorney disqualified or exempt from service, or subject to challenge for cause, 57 ALR4th 1260.

15-12-2. Legislators excused.

Any person summoned to serve as a juror in any court of this state shall be excused from such service during his attendance as a legislator in the General Assembly. (Ga. L. 1905, p. 93, § 2; Penal Code 1910, § 828; Code 1933, § 59-113.)

Cross references. — Legislator exemption, § 24-13-29.

OPINIONS OF THE ATTORNEY GENERAL

Members of General Assembly are not disqualified as jurors. 1948-49 Op. Att'y Gen. p. 583.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 159.

C.J.S. — 50A C.J.S., Juries, §§ 285, 302 et seq., 347 et seq.

15-12-3. Term of service on jury.

No person shall be allowed to serve on the trial jury of the superior court or on any trial jury in other courts for more than four weeks in any one year unless he or she is actually engaged in the trial of a case when the four weeks expire, in which case he or she shall be discharged as soon as the case is decided. (Ga. L. 1872, p. 15, § 1; Code 1873, § 3938; Code 1882, § 3938; Penal Code 1895, § 865; Penal Code 1910, § 869; Code 1933, § 59-118; Ga. L. 2011, p. 59, § 1-6/HB 415; Ga. L. 2014, p. 862, § 3/HB 1078.)

The 2014 amendment, effective April 29, 2014, deleted the former first sentence, which read: "No person shall be compellable to serve on the grand or trial jury of the superior court or on any jury in other courts for more than four weeks in any year.", and inserted "trial" near the middle of this Code section.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Word "year" refers to calendar year. Atlanta & C. Air-Line R.R. v. Ray, 70 Ga. 674 (1883).

Grand juror is not prevented from acting as talesman. Loeb v. State, 75 Ga. 258 (1885).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 161, 163.

C.J.S. — 50A C.J.S., Juries, § 350.

ALR. — Time jury may or must be kept together upon disagreement in civil case, 164 ALR 1265.

15-12-4. Eligibility of person to serve as a trial or grand juror.

(a) Any person who has served as a trial or grand juror at any session of the superior or state courts shall be ineligible for duty as a juror until the next succeeding county master jury list has been received by the clerk.

(b) In addition to any other qualifications provided under this chapter, no person shall be qualified to serve as a juror under this chapter unless that person is a citizen of the United States. (Ga. L. 1903, p. 83, §§ 1, 2; Penal Code 1910, §§ 824, 825; Ga. L. 1911, p. 72, § 1; Code 1933, §§ 59-114, 59-115; Ga. L. 1983, p. 884, § 3-15; Ga. L. 1984, p. 22, § 15; Ga. L. 2011, p. 59, § 1-7/HB 415; Ga. L. 2014, p. 451, § 5/HB 776; Ga. L. 2014, p. 862, § 4/HB 1078.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, substituted "juror until the next succeeding county master jury list has been received by the clerk" for "juror at the next succeeding term of the court in which such person has previously served but shall be eligible to serve at the next succeeding term of court for a different level of court" at the end of subsection (a). The second 2014 amendment, effective April 29, 2014, in subsection (a), inserted "trial or grand" near the beginning, and made an identical change as the first amendment.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Failure to object waives error in not questioning juror. — Since the trial court failed to ask the first juror whether that juror had served as a member of the grand jury or traverse jury during the previous term, any error was waived by the defendant's failure to object at the time. Whittington v. State, 252 Ga. 168, 313 S.E.2d 73 (1984).

Plea in abatement filed before arraignment of defendant sustained if section is violated. Tompkins v. State, 138 Ga. 465, 75 S.E. 594 (1912); Long v. State, 160 Ga. 291, 127 S.E. 842 (1925).

Disqualification is disqualification propter defectum. — Disqualification or ineligibility of a grand juror or grand jurors to serve as such at one term because the juror served as a member or members of the grand jury at the immediate preceding term of the court is a disqualification propter defectum, and if possible, the question of the ineligibility of the juror or the jurors to serve must be made before the juror or jurors act and return the true bill. Hawkins v. State, 86 Ga. App. 872, 72 S.E.2d 778 (1952).

Fact that juror served at preceding term not ground for new trial. — Fact that one of the jurors who tried the case had, unknown to the defendant or the defendant's counsel, served as a traverse juror at the next preceding term of the superior court, while a good ground for challenge, is not ground for a new trial. Seaboard Air Line Ry. v. Benton, 43 Ga. App. 495, 159 S.E. 717 (1931), rev'd on other grounds, 175 Ga. 491, 165 S.E. 593 (1932).

Local act fixing terms and providing for grand juries in superior courts is general law and as such can change or modify this section. Long v. State, 34 Ga. App. 125, 128 S.E. 784 (1925); Brown v. State, 242 Ga. 602, 250 S.E.2d 491 (1978).

Cited in Wall v. State, 126 Ga. 86, 54 S.E. 815 (1906); Staten v. State, 141 Ga. 82, 80 S.E. 850 (1913); Johns v. State, 180 Ga. 187, 178 S.E. 707 (1935); Hawkins v. State, 86 Ga. App. 872, 72 S.E.2d 778 (1952); Lundy v. State, 119 Ga. App. 585, 168 S.E.2d 199 (1969); Jones v. State, 137 Ga. App. 612, 224 S.E.2d 473 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 161, 163.

C.J.S. — 50A C.J.S., Juries, § 300.

ALR. — Service on jury in prosecution for selling intoxicating liquor as disqualification as juror in similar case, 3 ALR 1206.

Prior service on grand jury which considered indictment against accused as disqualification for service on petit jury, 24 ALR3d 1236.

15-12-5. Service at next term when term not held.

Whenever a term of court is not held because of the nonattendance of the judge or for some other cause, the jurors summoned for such term of court shall serve at the next succeeding term. (Laws 1805, Cobb's 1851 Digest, p. 550; Code 1863, § 3848; Code 1868, § 3868; Code 1873, § 3945; Code 1882, § 3945; Penal Code 1895, § 875; Penal Code 1910, § 880; Code 1933, § 59-119.)

Law reviews. — For annual survey article on trial practice and procedure, see 50 Mercer L. Rev. 359 (1998).

JUDICIAL DECISIONS

Cited in Walker v. O'Connor, 23 Ga. App. 22, 97 S.E. 276 (1918).

OPINIONS OF THE ATTORNEY GENERAL

Grand jury of superior court can be recessed for good cause and jurors resummoned and grand jury reconvened at some subsequent time. 1967 Op. Att'y Gen. No. 67-347.

RESEARCH REFERENCES

ALR. — Jurisdiction or power of grand jury after expiration of term of court for which organized, 75 ALR2d 544.

15-12-6. Fees of special criminal bailiffs.

In all cases in the superior, state, or city courts in which services are performed by a special criminal bailiff of any of such courts, the same fees shall be charged as costs as are provided by law for similar services when performed by a sheriff. When collected, the fees shall be paid by the officer collecting the same into the treasury of the county in which the court is held. (Ga. L. 1902, p. 100, § 1; Civil Code 1910, § 6000; Code 1933, § 24-3202.)

Cross references. — Giving of receipts for fees, penalty for charging excessive fees, § 15-13-30 et seq.

JUDICIAL DECISIONS

Cited in MacNeill v. Steele, 186 Ga. 792, 199 S.E. 99 (1938); Giddens v. State, 156 Ga. App. 258, 274 S.E.2d 595 (1980); Walden v. State, 185 Ga. App. 413, 364 S.E.2d 304 (1987).

15-12-7. Compensation of court bailiffs and expense allowance for trial or grand jurors.

(a) The first grand jury impaneled at the fall term of the superior courts of the several counties shall fix:

(1) The compensation of court bailiffs in the superior courts of such counties for the next succeeding year, such compensation not to be less than $5.00 per diem. The same compensation shall be allowed to bailiffs of the several state courts and special courts as is allowed bailiffs in the superior court of the county in which the state or special court is located;

(2) An expense allowance for trial or grand jurors in the superior courts of such counties for the next succeeding year not to be less than $5.00 nor to exceed $50.00 per diem. The same expense allowance shall be allowed to jurors of the several state courts and special courts as is allowed jurors in the superior court of the county in which the state or special court is located; and

(3) An expense allowance for grand jurors, such expense allowance not to be less than $5.00 nor to exceed $50.00 per diem.

(b) Any increase in the compensation of court bailiffs or increases in expense allowances for jurors fixed by a grand jury shall be subject to the approval of the governing authority of the county. (Orig. Code 1863, § 3846; Code 1868, § 3866; Ga. L. 1871-72, p. 47, § 4; Code 1873, § 3940; Ga. L. 1878-79, p. 190, § 1; Code 1882, § 3940; Ga. L. 1890-91, p. 80, § 1; Ga. L. 1895, p. 74, § 1; Penal Code 1895, § 872; Penal Code 1910, § 876; Ga. L. 1919, p. 104, § 1; Code 1933, § 59-120; Ga. L. 1946, p. 72, § 1; Ga. L. 1957, p. 43, § 1; Ga. L. 1966, p. 442, § 1; Ga. L. 1971, p. 205, § 1; Ga. L. 1972, p. 1132, § 1; Ga. L. 1974, p. 325, § 1; Ga. L. 1975, p. 684, § 1; Ga. L. 1979, p. 601, § 1; Ga. L. 1981, p. 685, § 1; Ga. L. 1984, p. 616, § 1; Ga. L. 1989, p. 242, § 1; Ga. L. 1995, p. 790, § 1; Ga. L. 1999, p. 836, § 1; Ga. L. 2000, p. 1587, § 1; Ga. L. 2008, p. 168, § 1/HB 1086; Ga. L. 2011, p. 59, § 1-8/HB 415; Ga. L. 2014, p. 862, § 5/HB 1078.)

The 2014 amendment, effective April 29, 2014, inserted "trial or grand" near the beginning of the first sentence of paragraph (a)(2).

Cross references. — Compensation of grand jurors and trial jurors, Ga. Const. 1983, Art. I, Sec. I, Para. XI. Discrimination against employee for attending a judicial proceeding in response to a court order or process, § 34-1-3.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Intent of section. — This section reveals an intent to effectuate three purposes: (1) to fix by law a maximum for compensation of bailiffs; (2) to vest in the county authorities of each county the right to determine the amount of compensation in that county, not to exceed such maximum; and (3) to authorize and require the county authorities to reexamine the question of compensation and fix the amount once each year. Carroll v. Ragsdale, 192 Ga. 118, 15 S.E.2d 210 (1941).

Cited in Tanner v. Rosser, 89 Ga. 811, 15 S.E. 750 (1892); Chambers v. State, 22 Ga. App. 748, 97 S.E. 256 (1918); Holloway v. State, 178 Ga. App. 141, 342 S.E.2d 363 (1986); Walden v. State, 185 Ga. App. 413, 364 S.E.2d 304 (1987); Metropolitan Atlanta Rapid Transit Auth. v. Partridge, 187 Ga. App. 637, 371 S.E.2d 185 (1988); Stinski v. State, 286 Ga. 839, 691 S.E.2d 854 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Uniformed members of Georgia State Patrol serving as jurors. — Uniformed members of the Georgia State Patrol who are subpoenaed and accepted for jury duty may legally accept payment pursuant to paragraph (a)(2) of O.C.G.A. § 15-12-7 and should be placed on "court leave" while serving on a jury in accordance with the rules and regulations of the State Personnel Board. 1984 Op. Att'y Gen. No. 84-76.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 100.

C.J.S. — 50A C.J.S., Juries, § 351.

15-12-8. Expense allowance when no grand jury impaneled.

If in any county no grand jury is impaneled in the fall of any year, then, as to such county, the expense allowance provided for in Code Section 15-12-7 shall remain as fixed by the grand jury for the preceding year. (Orig. Code 1863, § 3846; Code 1868, § 3866; Ga. L. 1871-72, p. 47, § 4; Code 1873, § 3940; Ga. L. 1878-79, p. 190, § 2; Code 1882, § 3940; Penal Code 1895, § 873; Penal Code 1910, § 878; Code 1933, § 59-121; Ga. L. 1974, p. 325, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 100.

15-12-9. Expense allowance of persons who appear but are not sworn as trial or grand juror.

The persons who appear in answer to the summons for trial or grand jury service shall receive the expense allowance for the day of their appearance even if they are not sworn as jurors. (Ga. L. 1890-91, p. 225,

§ 1; Penal Code 1895, § 874; Penal Code 1910, § 879; Code 1933, § 59-122; Ga. L. 1974, p. 325, § 3; Ga. L. 2011, p. 59, § 1-9/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 100.

C.J.S. — 50A C.J.S., Juries, § 351.

15-12-10. Juror's failure to appear or unauthorized absence; contempt.

If any person is duly summoned to appear as a trial or grand juror at court and neglects or refuses to appear, or if any juror absents himself or herself without leave of the court, such neglect, refusal, or absence may, after notice and hearing, be punished as contempt of court. (Ga. L. 1869, p. 139, § 7; Ga. L. 1872, p. 15, § 1; Code 1873, § 3938; Code 1882, § 3938; Penal Code 1895, § 864; Penal Code 1910, § 868; Code 1933, § 59-117; Ga. L. 1976, p. 438, § 5; Ga. L. 1995, p. 1292, § 1; Ga. L. 2011, p. 59, § 1-10/HB 415; Ga. L. 2014, p. 862, § 6/HB 1078.)

The 2014 amendment, effective April 29, 2014, inserted "trial or grand" near the beginning, and substituted "such" for "said" near the middle.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 98.

C.J.S. — 50A C.J.S., Juries, §§ 345, 346.

ALR. — Holding jurors in contempt under state law, 93 ALR5th 493.

15-12-11. Appointment of jury clerk and other personnel; trial or grand juror questionnaires; construction with other laws.

(a) In all counties having a population of 600,000 or more according to the United States decennial census of 1990 or any future such census, the judges of the superior court of such counties, by a majority vote of all of them, shall have the power to appoint a jury clerk and such other personnel as may be deemed necessary or advisable to dispatch the work of the court. The appointments to such positions and the compensation therefor shall be determined by the judges without regard to any other system or rules, such personnel to serve at the pleasure of the judges. The salaries and expenses of the personnel and

any attendant expense of administration of the courts are determined to be contingent expense of court and shall be paid as provided by law for the payment of contingent expenses. The duties of the personnel shall be as prescribed by the judges.

(b) Prospective trial and grand jurors in all counties may be required to answer written questionnaires, as may be determined and submitted by the judges of such counties, concerning their qualifications as jurors. In propounding the court's questions, the court may consider the suggestions of counsel. In the court's questionnaire and during voir dire examination, judges should ensure that the privacy of prospective jurors is reasonably protected and that the questioning by counsel is consistent with the purpose of the voir dire process.

(c) Juror questionnaires shall be confidential and shall be exempt from public disclosure pursuant to Article 4 of Chapter 18 of Title 50; provided, however, that jury questionnaires shall be provided to the court and to the parties at any stage of the proceedings, including pretrial, trial, appellate, or postconviction proceedings, and shall be made a part of the record under seal. The information disclosed to a party pursuant to this subsection shall only be used by the parties for purposes of pursuing a claim, defense, or other issue in the case.

(d) In the event any prospective juror fails or refuses to answer the questionnaire, the clerk shall report the failure or refusal to the court together with the facts concerning the same, and the court shall have such jurisdiction as is provided by law for subpoena, attachment, and contempt powers.

(e) This Code section shall be supplemental to other provisions of law, with a view toward efficient and orderly handling of jury selection and the administration of justice. (Ga. L. 1964, p. 2119, §§ 1-4; Code 1981, § 15-12-11, enacted by Ga. L. 1982, p. 2107, § 12; Ga. L. 1992, p. 1228, § 1; Ga. L. 1995, p. 1292, § 2; Ga. L. 2011, p. 59, § 1-11/HB 415; Ga. L. 2012, p. 218, § 3/HB 397; Ga. L. 2013, p. 141, § 15/HB 79; Ga. L. 2014, p. 862, § 7/HB 1078.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).

The 2014 amendment, effective April 29, 2014, inserted "trial and grand" at the beginning of the first sentence of subsection (b).

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

15-12-12. Power of chief judge of superior court to appoint a jury clerk and other necessary personnel; juror qualifications.

(a) In all counties of this state where the chief superior court judge of the county had the power to appoint a jury clerk on January 1, 2011, the chief judge of the superior court of such counties shall continue to have the power to appoint a jury clerk and such other personnel as may be deemed necessary or advisable to dispatch the work of the court, and the appointments to such positions and the compensation therefor shall be determined by such judge without regard to any other system or rules, such personnel to serve at the pleasure of such judge, and the salaries and expenses thereof and any attendant expenses of administration of the courts are determined to be contingent expenses of court and shall be paid as provided by law for the payment of contingent expenses. The duties of such personnel shall be as prescribed by such judge.

(b) All prospective jurors in such counties shall be required to answer questionnaires as may be determined and submitted by the chief superior court judge of such counties concerning their qualifications as jurors.

(c) In the event any such person fails or refuses to answer such questionnaire, the clerk shall report such failure or refusal to the court, together with the facts concerning the same, and the court shall have such jurisdiction as is now provided by law for subpoena, attachment, and contempt powers.

(d) This Code section shall be in addition and supplemental to other provisions provided by law, with a view toward efficient and orderly handling of jury selection and the administration of justice. (Code 1981, § 15-12-12, enacted by Ga. L. 2014, p. 451, § 6/HB 776.)

Effective date. — This Code section became effective July 1, 2014.

ARTICLE 2

BOARD OF JURY COMMISSIONERS

15-12-20 through 15-12-24.

Reserved. Repealed by Ga. L. 2014, p. 451, § 7/HB 776, effective July 1, 2014.

Editor's notes. — This article was based on Ga. L. 1878-79, p. 27, §§ 1-3; Ga. L. 1880-81, p. 124, § 1; Code 1882, §§ 3910a-3910c; Ga. L. 1882-83, p. 101, §§ 1-2; Ga. L. 1887, p. 52, § 1; Penal Code 1895, §§ 813-814, 816, 1109; Ga. L. 1899, p. 78, § 1; Ga. L. 1901, p. 43, § 1; Penal Code 1910, §§ 813- 815, 817, 1138; Code

1933, §§ 59-101-59-105; Ga. L. 1935, p. 151, § 1; Ga. L. 1941, p. 344, § 1; Ga. L. 1951, p. 693, § 1; Ga. L. 1974, p. 388, § 1; Ga. L. 1975, p. 826, § 1; Ga. L. 1982, p. 548, §§ 1, 2; Ga. L. 1982, p. 1230, §§ 1, 2; Ga. L. 1984, p. 22, § 15; Ga. L. 1985, p. 887, § 1; Ga. L. 1992, p. 1692, § 1; Ga. L. 1995, p. 1292, § 3; Ga. L. 2011, p. 59, §§ 1-12, 1-14/HB 415; Ga. L. 2012, p. 775, § 15/HB 942.

Ga. L. 2014, p. 862, § 8/HB 1078, purported to amend paragraph (b)(2) of Code Section 15-12-23; however, due to the earlier repeal of this Code section, this amendment has not been given effect.

ARTICLE 3

SELECTION OF JURORS

Cross references. — Discrimination against employee for attending a judicial proceeding in response to a court order or process, § 34-1-3.

JUDICIAL DECISIONS

Constitutionality of jury selection system. — There is no constitutional defect in system of selecting jurors. Mann v. Cox, 487 F. Supp. 147 (S.D. Ga. 1979).

Purpose and construction. — Statutes for selecting jurors, drawing and summoning jurors, form no part of a system to procure an impartial jury to parties. The statutes establish a mode of distributing jury duties among persons in the respective counties, the statutes provide for rotation in jury service, the statutes prescribe the qualifications of jurors, and the time and manner of summoning the jurors, and are directory to those whose duty it is to select, draw, and summon persons for jurors. Obviously, however, a disregard of the essential and substantial provisions of the statute will have the effect of vitiating the array. Franklin v. State, 245 Ga. 141, 263 S.E.2d 666, cert. denied, 447 U.S. 930, 100 S. Ct. 3029, 65 L. Ed. 2d 1124 (1980).

RESEARCH REFERENCES

C.J.S. — 38A C.J.S., Grand Juries, § 32.

ALR. — Validity of jury selection as affected by accused's absence from conducting of procedures for selection and impaneling of final jury panel for specific case, 33 ALR4th 429.

15-12-40. Ineligibility to serve as trial juror.

Any person who has been convicted of a felony in a state or federal court who has not had his or her civil rights restored and any person who has been judicially determined to be mentally incompetent shall not be eligible to serve as a trial juror. (Code 1981, § 15-12-40, enacted by Ga. L. 2012, p. 173, § 3-1/HB 665.)

Effective date. — This Code section became effective July 1, 2012.

Cross references. — Registration of voters and compilation of official registered voters' lists, § 21-2-210 et seq.

Editor's notes. — This Code section formerly pertained to the compilation, maintenance, and revision of jury lists. The former Code section was based on Ga. L. 1878-79, p. 27, § 2; Ga. L. 1878-79, p. 34, § 1; Ga. L. 1880-81, p. 124, § 1; Code 1882, §§ 3910b, 3910d; Ga. L. 1887, p. 31, § 1; Ga. L. 1892, p. 61, § 1; Penal Code 1895, §§ 815, 818; Ga. L. 1897, p. 40, § 1;

Ga. L. 1899, p. 44, § 1; Penal Code 1910, §§ 816, 819; Code 1933, § 59-106; Ga. L. 1953, Nov.-Dec. Sess., p. 284, § 1; Ga. L. 1955, p. 247, § 1; Ga. L. 1967, p. 251, § 1; Ga. L. 1968, p. 533, § 1; Ga. L. 1973, p. 484, § 1; Ga. L. 1976, p. 438, § 1; Ga. L. 1978, p. 1611, § 1; Ga. L. 1979, p. 3, § 1; Ga. L. 1985, p. 149, § 15; Ga. L. 1985, p. 1511, § 2; Ga. L. 1987, p. 953, § 1; Ga. L. 1987, p. 1575, § 1; Ga. L. 1988, p. 13, § 15; Ga. L. 1989, p. 427, § 1; Ga. L. 1995, p. 1292, § 4; Ga. L. 1999, p. 890, § 1; Ga. 2001, Ex. Sess., p. 318, §§ 1-1, 2-1; Ga. L. 2005, p. 334, § 5-3/HB 501; Ga. L. 2006, p. 897, § 1/HB 1417; Ga. L. 2011, p. 59, § 1-15/HB 415 and was repealed by its own terms effective July 1, 2012.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 59-106 and former Code Section 15-12-40 are included in the annotations under this Code section.

Fourteenth Amendment protects all citizens. — United States Const., amend. 14 protects all and not some citizens as to discrimination in jury selection. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

Jury service is a duty rather than a right. — Jury service is not a right or privilege but is a burden which the state summons certain of the state's citizens to bear. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

Presumption that jurors able to correctly analyze facts. — Jurors are expected to bring into the box not only uprightness, but also intelligence, and there ought to be a presumption that jurors, through the use of the intelligence which the jurors are required to have in order to be qualified to be jurors, are able to correctly analyze the evidence and determine the facts, shown by such evidence, to have occurred. Purcell v. Hill, 111 Ga. App. 256, 141 S.E.2d 153 (1965) (decided under former Code 1933, § 59-106).

Competency of juror. — Defendant did not show that juror was incompetent to serve merely because the juror gave an incoherent answer the first time the juror was polled about the defendant's verdict; thus, denial of the defendant's motion for a new trial was proper. Creed v. State, 255 Ga. App. 425, 565 S.E.2d 480 (2002) (decided under former O.C.G.A. § 15-12-40).

Cited in Ellington v. State, 292 Ga. 109, 735 S.E.2d 736 (2012).

15-12-40.1. State-wide master jury list; driver's license information; list of registered voters; random list of persons to comprise venire.

(a) After July 1, 2011, the council shall compile a state-wide master jury list. The council shall facilitate updating of all information relative to jurors on the state-wide master jury list and county master jury lists.

(b) After July 1, 2011, upon the council's request, the Department of Driver Services shall provide the council and the Administrative Office of the Courts data showing the full name of all persons who are at least 18 years of age and residents of this state who have been issued a driver's license or personal identification card pursuant to Chapter 5 of Title 40, whether or not such license or identification card is valid or expired. In addition to the person's full name, the Department of Driver Services shall include the person's address, city of residence, date of

birth, gender, driver's license or personal identification card number, and, whenever racial and ethnic information is collected by the Department of Driver Services for purposes of voter registration pursuant to Code Section 21-2-221, racial and ethnic information. The Department of Driver Services shall provide the effective date, document issue date, and document expiration date; shall indicate whether the document is a driver's license or a personal identification card; and shall exclude persons whose driver's license has been suspended or revoked due to a felony conviction, whose driver's license has been expired for more than 730 days, or who have been identified as not being citizens of the United States. The Department of Driver Services shall also provide the names and identifying information specified by this subsection of persons convicted in this state or in another state of driving without a license. Such data shall be in electronic format as required by the council.

(c) After July 1, 2011, upon request by the council, the Secretary of State shall provide to the council and the Administrative Office of the Courts, without cost, the list of registered voters, including the voter's date of birth, address, gender, race, social security number, driver's license number, and when it is available, the voter's ethnicity. Such list shall exclude persons whose voting rights have been removed.

(d) On and after July 1, 2014, each clerk shall obtain its county master jury list from the council. The council shall disseminate, in electronic format, a county master jury list to the respective clerk once each calendar year. The council shall determine the fee to be assessed each county for such list, provided that such fee shall not exceed 3¢ per name on the list. The council shall invoice each clerk upon the delivery of the county master jury list, and the recipient county shall remit payment within 30 days of the invoice.

(e) On and after July 1, 2014, upon request by the council, the Department of Public Health shall provide to the council, without cost, data relating to death certificates for residents of this state for the 15 year period preceding the date of the request. In addition to the deceased person's full name, the data shall include the person's address, including the county of residence and ZIP Code, date of birth, gender, and county in which the person died. Such data shall be in electronic format as required by the council.

(f) On and after July 1, 2015, upon request by the council, the Department of Community Supervision and, on and after July 1, 2014, upon request by the council, the Department of Corrections, the Georgia Crime Information Center division of the Georgia Bureau of Investigation, and the State Board of Pardons and Paroles shall provide to the council, without cost, a list of the names of all persons who have been convicted of a felony in state or federal court if the person has not had his or her civil rights restored. In addition to the convicted person's

full name, the data shall include the person's address, including the county of residence and ZIP Code, date of birth, gender, and race if available. Such data shall be in electronic format as required by the council.

(g) After July 1, 2012, in each county, upon court order, the clerk shall choose a random list of persons from the county master jury list to comprise the venire; provided, however, that jurors summoned prior to July 1, 2012, shall remain eligible to comprise the venire. (Code 1981, § 15-12-40.1, enacted by Ga. L. 1994, p. 408, § 1; Ga. L. 2011, p. 59, § 1-16/HB 415; Ga. L. 2012, p. 173, § 3-2/HB 665; Ga. L. 2014, p. 451, § 8/HB 776; Ga. L. 2015, p. 422, § 5-18/HB 310.)

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

The 2015 amendment, effective July 1, 2015, inserted "July 1, 2015, upon request by the council, the Department of Community Supervision and, on and after" in the first sentence in subsection (f). See editor's note for applicability.

Cross references. — Registration of voters and compilation of official registered voters' lists, § 21-2-210 et seq. Unified appeal, pretrial proceedings, Uniform Superior Court Rules, Rule 34. Authority of probate courts to enact local rules, Uniform Rules for the Probate Courts, Rule 1.2.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For annual survey of death penalty law, see 56 Mercer L. Rev. 197 (2004).

For comment on discriminatory jury selection, in light of Avery v. Georgia, 345 U.S. 559, 73 S. Ct. 891, 97 L. Ed. 1244 (1953), see 5 Mercer L. Rev. 207 (1953). For comment on Allen v. State, 110 Ga. App. 56, 137 S.E.2d 711 (1964), see 1 Ga. St. B.J. 371 (1965). For comment on Simmons v. Jones, 478 F.2d 321 (5th Cir. 1973), see 8 Ga. L. Rev. 510 (1974).

JUDICIAL DECISIONS

Analysis

General Consideration
Jury Commissioners
Makeup of Juries
1. In General
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Proof of Jury Discrimination
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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under Ga. L. 1878-79, p. 27, §§ 2, 3; Ga. L. 1878-79, p. 34, § 1; Ga. L. 1880-81, p. 124, § 1; Code 1882, §§ 3910b, 3910d, 3910e; Penal Code 1895, §§ 815, 818, 819; Ga. L. 1897, p. 40, § 1; Ga. L. 1899, p. 44, § 1; Penal Code 1910, §§ 816, 819; Code 1933, §§ 59-106, 59-108; and former O.C.G.A. §§ 15-12-40 and 15-12-42 are included in the annotations for this Code section.

Constitutionality. — This section does not violate U.S. Const., amends. 13 and 14, and is not void for vagueness. Robinson v. State, 225 Ga. 167, 167 S.E.2d 158 (1969) (decided under former Code 1933, § 59-106).

This section is not void for vagueness in the statute's mandate to select a fairly representative cross-section of the intelligent and upright citizens of the county from the official registered voters' list which was used in the last preceding general election. Johnson v. Caldwell, 228 Ga. 776, 187 S.E.2d 844 (1972) (decided under former Code 1933, § 59-106).

Procedures are directory. — Statutory procedures for creating the jury list are merely directory and do not serve to deprive the defendant of any rights. Dillard v. State, 177 Ga. App. 805, 341 S.E.2d 310 (1986) (decided under former O.C.G.A. § 15-12-40).

Georgia's scheme for selecting grand juries and boards of education is not inherently unfair or necessarily incapable of administration without regard to race; the federal courts are not powerless to remedy unconstitutional departures from Georgia law by declaratory and injunctive relief. Turner v. Fouche, 396 U.S. 346, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970) (decided under former Code 1933, § 59-106).

Determination of discrimination. — There is a progression of legal exercises leading to the conclusion of discrimination in jury selection. The first is the right to rely on the fact that peremptory strikes offer the prosecution a potential tool for discrimination. Second, the defendant must show membership in a racially cognizable group and that the prosecution used peremptory strikes to remove persons of defendant's race from the jury. Finally, the defendant is burdened with showing that these facts and other relevant circumstances raise an inference of the prosecution's racial motive in the use of peremptory strikes. Aldridge v. State, 258 Ga. 75, 365 S.E.2d 111 (1988) (decided under former O.C.G.A. § 15-12-40).

Fourteenth Amendment protects all citizens. — United States Const., amend. 14 protects all and not some citizens as to discrimination in jury selection. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

Jury service is a duty rather than a right. — Jury service is not a right or privilege but is a burden which the state summons certain of the state's citizens to bear. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

Presumption that jurors able to correctly analyze facts. — Jurors are expected to bring into the box not only uprightness, but also intelligence, and there ought to be a presumption that jurors, through the use of the intelligence which the jurors are required to have in order to be qualified to be jurors, are able to correctly analyze the evidence and determine the facts, shown by such evidence, to have occurred. Purcell v. Hill, 111 Ga. App. 256, 141 S.E.2d 153 (1965) (decided under former Code 1933, § 59-106).

Competency of juror. — Defendant did not show that juror was incompetent to serve merely because the juror gave an incoherent answer the first time the juror was polled about defendant's verdict; thus, denial of defendant's motion for a new trial was proper. Creed v. State, 255 Ga. App. 425, 565 S.E.2d 480 (2002) (decided under former O.C.G.A. § 15-12-40).

Programming computer for racial balance. — Nothing in former O.C.G.A. § 15-12-40 or former O.C.G.A. § 15-12-42 forbade the clerk from maintaining and operating in the clerk's office the electronic equipment used to store and re-

trieve the jury data. Nor did these Code sections forbid programming the jury-selection computer to racially balance the venires the computer selects. Meders v. State, 260 Ga. 49, 389 S.E.2d 320 (1990), cert. denied, 506 U.S. 837, 113 S. Ct. 114, 121 L. Ed. 2d 71 (1992) (decided under former O.C.G.A. § 15-12-40).

Waiver of citizenship issue. — Defendant did not show deprivation of a constitutional right and waived the disqualification imposed by O.C.G.A. § 15-12-40.1 by not challenging a non-U.S. citizen juror before trial, and because defendant could not show that the juror was asked about citizenship during voir dire, that the juror lied about citizenship on a jury questionnaire or in response to inquiries made by court personnel, or that the juror's status as a non-U.S. citizen affected the juror's ability to understand the law and apply the law as instructed by the trial court. Moton v. State, 256 Ga. App. 594, 569 S.E.2d 264 (2002).

Section directory. — Statutes regulating the selection, drawing, and summoning of jurors are intended to distribute jury duties among the citizens of the county, provide for rotation in jury service, and are merely directory. Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931) (decided under former Penal Code 1910, § 820).

Object of laws regulating selection, drawing, and summoning of jury is not to secure impartial jurors. Rafe v. State, 20 Ga. 60 (1856) (decided under former law). Woolfolk v. State, 85 Ga. 69, 11 S.E. 814 (1890) (decided under former Code 1882, § 3910e).

Statutes for selecting jurors, drawing and summoning jurors, form no part of a system to procure an impartial jury to parties. Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931) (decided under former Penal Code 1910, § 820).

Alphabetical, geographical, or numerical patterns. — Jury lists should not contain alphabetical, geographical, or numerical patterns. Larmon v. State, 256 Ga. 228, 345 S.E.2d 587 (1986) (decided under former O.C.G.A § 15-12-42).

Geographical voting districts. — Fact that the names on the master jury list were originally obtained from geographical voting districts would not cause a non-random geographical pattern. Thus, the defendant failed to show a deliberate and systematic exclusion of identifiable and distinct groups, such as urban or black. Larmon v. State, 256 Ga. 228, 345 S.E.2d 587 (1986) (decided under former O.C.G.A § 15-12-42).

Length of voters' registration not significant. — Defendant failed to establish prima facie that those who were more recently registered voters and those who had been registered for a longer period were distinct and identifiable groups in the community. Larmon v. State, 256 Ga. 228, 345 S.E.2d 587 (1986) (decided under former O.C.G.A § 15-12-42).

Drawing names by the judge. — Trial judge is not required physically to pass the judge's own hand into the box in which the name cards are kept to grasp the card in the judge's fingers and the statute was complied with when a small child drew a card under the scrutiny of the trial judge. Sanders v. State, 164 Ga. App. 13, 296 S.E.2d 213 (1982) (decided under former O.C.G.A § 15-12-42).

Writ of prohibition to prevent revision. — Taxpayers cannot by writ of prohibition prevent jury commissioners from revising lists and making up jury boxes. Teem v. Cox, 148 Ga. 175, 96 S.E. 131 (1918) (decided under former Penal Code 1910, § 820).

Citizens and taxpayers have not such interest as will authorize them to maintain a petition for the writ of prohibition to prevent the jury commissioners of the county from revising jury lists and making up jury boxes as provided in former Penal Code 1910, §§ 816 and 820 et seq. and this principle is applicable when a plaintiff was a citizen and taxpayer and also was an attorney at law. Ritcher v. Jordan, 184 Ga. 683, 192 S.E. 715 (1937) (decided under former Code 1933, § 59-108).

Programming computer for racial balance. — Nothing in former O.C.G.A. § 15-12-40 or former O.C.G.A. § 15-12-42 forbids the clerk from maintaining and operating in the clerk's office the electronic equipment used to store and retrieve the jury data. Nor did these Code sections forbid programming the

General Consideration (Cont'd)

jury-selection computer to racially balance the venires it selected. Meders v. State, 260 Ga. 49, 389 S.E.2d 320 (1990), cert. denied, 506 U.S. 837, 113 S. Ct. 114, 121 L. Ed. 2d 71 (1992) (decided under former O.C.G.A § 15-12-42).

Cited in Wellman v. State, 100 Ga. 576, 28 S.E. 605 (1897); Staten v. State, 141 Ga. 82, 80 S.E. 850 (1913); Pollard v. State, 148 Ga. 447, 96 S.E. 997 (1918); Dunham v. State, 32 Ga. App. 416, 123 S.E. 723 (1924); White v. State, 166 Ga. 192, 142 S.E. 666 (1928); Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931); Griffin v. State, 183 Ga. 775, 190 S.E. 2 (1937); Cornelious v. State, 193 Ga. 25, 17 S.E.2d 156 (1941); Cady v. State, 198 Ga. 99, 31 S.E.2d 38 (1944); Crumb v. State, 205 Ga. 547, 54 S.E.2d 639 (1949); Reece v. State, 208 Ga. 165, 66 S.E.2d 133 (1951); Robinson v. State, 86 Ga. App. 375, 71 S.E.2d 677 (1952); Williams v. Georgia, 349 U.S. 375, 75 S. Ct. 814, 99 L. Ed. 1161 (1955); Reynolds v. Reynolds, 217 Ga. 234, 123 S.E.2d 115 (1961); Huey v. Sechler, 107 Ga. App. 467, 130 S.E.2d 754 (1963); Vanleeward v. State, 220 Ga. 135, 137 S.E.2d 452 (1964); Brookins v. State, 221 Ga. 181, 144 S.E.2d 83 (1965); Ricks v. State, 221 Ga. 837, 147 S.E.2d 431 (1966); Fallaw v. Hobbs, 113 Ga. App. 181, 147 S.E.2d 517 (1966); Williams v. State, 222 Ga. 208, 149 S.E.2d 449 (1966); O'Bryant v. State, 222 Ga. 326, 149 S.E.2d 654 (1966); Roach v. Mauldin, 277 F. Supp. 54 (N.D. Ga. 1967); Whitus v. Georgia, 385 U.S. 545, 87 S. Ct. 643, 17 L. Ed. 2d 599 (1967); Woods v. State, 117 Ga. App. 546, 160 S.E.2d 922 (1968); Lingo v. State, 224 Ga. 333, 162 S.E.2d 1 (1968); Bailey v. State, 118 Ga. App. 93, 162 S.E.2d 786 (1968); Whippler v. Dutton, 391 F.2d 425 (5th Cir. 1968); Roach v. Mauldin, 391 F.2d 907 (5th Cir. 1968); Pullum v. Greene, 396 F.2d 251 (5th Cir. 1968); Simmons v. State, 226 Ga. 110, 172 S.E.2d 680 (1970); Kemp v. State, 226 Ga. 506, 175 S.E.2d 869 (1970); Donlavey v. Smith, 426 F.2d 800 (5th Cir. 1970); Georgia v. Birdsong, 428 F.2d 1223 (5th Cir. 1970); Hill v. Smith, 326 F. Supp. 1002 (N.D. Ga. 1971); Mitchell v. Smith, 229 Ga. 781, 194 S.E.2d 414 (1972); Jones v. Caldwell, 230 Ga. 775, 199 S.E.2d 248 (1973); Wright v. Smith, 474 F.2d 349 (5th Cir. 1973); Spaulding v. State, 232 Ga. 411, 207 S.E.2d 43 (1974); McHan v. State, 232 Ga. 470, 207 S.E.2d 457 (1974); Estes v. State, 232 Ga. 703, 208 S.E.2d 806 (1974); State v. Gould, 232 Ga. 844, 209 S.E.2d 312 (1974); Maddox v. State, 233 Ga. 874, 213 S.E.2d 654 (1975); Zirkle v. State, 235 Ga. 289, 219 S.E.2d 389 (1975); Sanders v. State, 235 Ga. 425, 219 S.E.2d 768 (1975); Foster v. Sparks, 506 F.2d 805 (5th Cir. 1975); Guy v. State, 138 Ga. App. 11, 225 S.E.2d 492 (1976); Gibson v. State, 236 Ga. 874, 226 S.E.2d 63 (1976); State v. Gethers, 139 Ga. App. 1, 227 S.E.2d 832 (1976); Barrow v. State, 239 Ga. 162, 236 S.E.2d 257 (1977); Hudson v. State, 240 Ga. 70, 239 S.E.2d 330 (1977); Brown v. Culpepper, 559 F.2d 274 (5th Cir. 1977); Mann v. Cox, 487 F. Supp. 147 (S.D. Ga. 1979); Dampier v. State, 245 Ga. 427, 265 S.E.2d 565 (1980); Robinson v. Kimbrough, 620 F.2d 468 (5th Cir. 1980); High v. State, 247 Ga. 289, 276 S.E.2d 5 (1981); Robinson v. Kimbrough, 652 F.2d 458 (5th Cir. 1981); Sacchinelli v. State, 161 Ga. App. 763, 288 S.E.2d 894 (1982); Gibson v. Zant, 705 F.2d 1543 (11th Cir. 1983); Davis v. Zant, 721 F.2d 1478 (11th Cir. 1983); Robinson v. State, 179 Ga. App. 616, 347 S.E.2d 667 (1986); Tankersley v. State, 261 Ga. 318, 404 S.E.2d 564 (1991); Wellons v. State, 266 Ga. 77, 463 S.E.2d 868 (1995); Cox v. State, 241 Ga. App. 388, 526 S.E.2d 887 (1999); Morrow v. State, 272 Ga. 691, 532 S.E.2d 78 (2000); Smith v. State, 275 Ga. 715, 571 S.E.2d 740 (2002); Al-Amin v. State, 278 Ga. 74, 597 S.E.2d 332 (2004); Greene v. State, 312 Ga. App. 666, 722 S.E.2d 77 (2011); Ellington v. State, 292 Ga. 109, 735 S.E.2d 736 (2012).

Jury Commissioners

Race may not be considered. — To consider skin color in appointment of jury commissioners would be unconstitutional. Woods v. State, 222 Ga. 321, 149 S.E.2d 674 (1966), cert. denied, 386 U.S. 994, 87 S. Ct. 1311, 18 L. Ed. 2d 340 (1967) (decided under former Code 1933, § 59-106).

Duty to avoid discrimination. — Jury commissioners have duty not to pursue course of conduct which results in

racial discrimination. Bonaparte v. Smith, 362 F. Supp. 1315 (S.D. Ga.), aff'd, 484 F.2d 956 (5th Cir. 1973), cert. denied, 415 U.S. 981, 94 S. Ct. 1572, 39 L. Ed. 2d 878 (1974) (decided under former Code 1933, § 59-106).

Mere failure to comply with section does not give rise to federal cause of action. — Failure of county jury commissioners to comply with this section, without a showing of systematic exclusion on the basis of race or some other ground forbidden by national policy, does not give rise to a federal cause of action. Simmons v. Jones, 478 F.2d 321 (5th Cir. 1973), modified, 519 F.2d 52 (5th Cir. 1975), for comment, see 8 Ga. L. Rev. 510 (1974). (decided under former Code 1933, § 59-106).

Good faith no defense. — Fact that jury commissioners have acted in good faith is not a defense to the failure to discharge the affirmative duties cast upon the commissioners to compose a list of intelligent and upright jurors who represent a cross-section of such persons. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

If procedures used produce a list which is not representative of the county, the commissioners must find ways to supplement their sources of potential jurors' names. Berry v. Cooper, 577 F.2d 322 (5th Cir. 1978) (decided under former Code 1933, § 59-106).

It is mandatory that the number of persons selected to serve not exceed two-fifths of whole number selected for service. Kirksey v. State, 11 Ga. App. 142, 74 S.E. 902 (1912) (decided under former Penal Code 1910, §§ 816 and 819); Davis v. Arthur, 139 Ga. 74, 76 S.E. 676 (1912) (decided under former Penal Code 1910, §§ 816 and 819).

Makeup of Juries

1. In General

Constitutionality of standards set. — Standards of intelligence, uprightness, and experience established for jurors in this section do not violate U.S. Const., amend. 14 or Ga. Const. 1945, Art. I, Sec. I, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. I) and Ga. Const. 1945, Art. I, Sec. I, Para. II (see now Ga. Const. 1983, Art. I, Sec. I, Paras. I, II). White v. State, 230 Ga. 327, 196 S.E.2d 849, appeal dismissed, 414 U.S. 886, 94 S. Ct. 222, 38 L. Ed. 2d 134 (1973) (decided under former Code 1933, § 59-106).

Death penalty qualification of jurors does not violate the right to an impartial jury drawn from a representative cross-section of the community. DeYoung v. State, 268 Ga. 780, 493 S.E.2d 157 (1997), cert. denied, 523 U.S. 114, 118 S. Ct. 1848, 140 L. Ed. 2d 1097 (1998) (decided under former O.C.G.A. § 15-12-40).

Jury list must include a fair cross-section of the eligible members of the community, not every eligible member of the community. Lipham v. State, 257 Ga. 808, 364 S.E.2d 840, cert. denied, 488 U.S. 873, 109 S. Ct. 191, 102 L. Ed. 2d 160 (1988) (decided under former O.C.G.A. § 15-12-40).

Forced racial balancing of juries is not per se discriminatory. — Use of forced racial balancing was not violative of a defendant's statutory rights under O.C.G.A. § 15-12-40, et seq., and when a jury source list is constructed in accordance with the Unified Appeal Procedure, a defendant could not establish an equal protection violation. Al-Amin v. State, 278 Ga. 74, 597 S.E.2d 332, cert. denied, 543 U.S. 992, 125 S. Ct. 509, 160 L. Ed. 2d 380 (2004) (decided under former O.C.G.A. § 15-12-40).

Educational requirement. — Contrary to defendant's statement that the jury commissioners required a high school education for grand jury service, defendant failed to present evidence clearly showing what educational requirement was applied. The testimony actually elicited indicated nothing more specific than that the commissioners had required prospective grand jurors to "have a third-grade education or something," and that each prospective grand juror removed as a candidate for the grand jury source list was replaced with a candidate from the same race and sex categories. Sealey v. State, 277 Ga. 617, 593 S.E.2d 335 (2004) (decided under former O.C.G.A. § 15-12-40).

Makeup of Juries (Cont'd)
1. In General (Cont'd)

Right to jury representing cross-section of community. — Litigant in a civil case has a right under U.S. Const., amend. 14 to a jury list which fairly represents a cross-section of the community and that a jury roll is not such when excessive weight is given to some groups or classes. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

Tradition of trial by jury contemplates impartial jury drawn from cross-section of the community. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

Unified Appeal Procedure ensuring fair cross section. — Unified Appeal Procedure provides a statewide procedure for creating and evaluating jury source lists, and that method was designed to promote adequate representation of cognizable groups through the use of a comprehensive and objective standard. Although in some instances, that procedure may create temporary, self-rectifying anomalies as decennial census reports grow old, the ill done by those temporary anomalies is outweighed by the other benefits of the procedure. Thus, a continued adherence to the requirements of the Unified Appeal Procedure regarding the balancing of cognizable groups to match the most-recent decennial census is justified by a sufficiently significant state interest. Finally, a fair cross-section was also guaranteed by former O.C.G.A. § 15-12-40 under standards "comparable if not identical" to Sixth Amendment standards. Williams v. State, 287 Ga. 735, 699 S.E.2d 25 (2010) (decided under former O.C.G.A. § 15-12-40).

Discrimination may result from inclusion or exclusion. — Discrimination in jury selection may result from inclusion of certain groups as well as exclusion of others. An accused is entitled to have charges against the accused considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

Imperfection in representation not per se discrimination. — System employed in selecting a jury list under the laws of this state may be imperfect in that the system fails to achieve the ideal of a perfectly representative cross-section of the citizens for service on juries, but imperfection is not per se discrimination. Burns v. State, 119 Ga. App. 678, 168 S.E.2d 786 (1969) (decided under former Code 1933, § 59-106).

Defendant's motion to quash an indictment based on defendant's claim that there was an under-representation of African-Americans on the grand jury was denied after it was shown that the grand jury source list was based on a significant state interest of obtaining comprehensiveness and objectivity in the selection process. Despite the fact that there was a disparity of over 10 percent from the federal census reports and the source list, there was no violation of defendant's rights shown under U.S. Const., amend. VI, amend. XIV, or under former O.C.G.A. § 15-12-40. Ramirez v. State, 276 Ga. 158, 575 S.E.2d 462 (2003) (decided under former O.C.G.A. § 15-12-40).

Disparity met constitutional requirements. — Trial court did not err in denying the defendant's motion to quash the indictment based on the racial composition of the grand jury list because an absolute disparity of less than five percent was almost always constitutional, and the defendant showed no reason why that general rule did not apply in the defendant's case; the absolute disparity in over-representation on the grand jury list of 6.429 percent of African-Americans fell within a range that generally met constitutional requirements, and the defendant did not meet the defendant's burden of showing that the disparity violated the Sixth or Fourteenth Amendment of the United States Constitution, or former O.C.G.A. § 15-12-40. Worthy v. State, 307 Ga. App. 297, 704 S.E.2d 808 (2010) (decided under former O.C.G.A. § 15-12-40).

Jury roll need not be a perfect mirror of the community or accurately reflect proportionate strength of every identifiable group, for while the cross-sectional concept is firmly imbedded in the law, the Constitution does not require that the jury or jury venire be a statistical mirror of the community. Simmons v. Jones, 317 F. Supp. 397 (S.D. Ga. 1970), rev'd on other grounds, 478 F.2d 321 (5th Cir. 1973) (decided under former Code 1933, § 59-106).

As used in context of opportunity for discrimination, source of the jury list is the list of registered voters rather than the population as a whole since it is from the registered voters list that the jury commissioners select the initial jury array. Cochran v. State, 151 Ga. App. 478, 260 S.E.2d 391 (1979) (decided under former Code 1933, § 59-106).

List need not include every eligible citizen. — There is no requirement that the jury list include the name of every citizen of the county eligible for jury service; the list must include a fair-cross-section of the eligible members of the community, not every eligible member of the community. Ingram v. State, 253 Ga. 622, 323 S.E.2d 801 (1984), cert. denied, 473 U.S. 911, 105 S. Ct. 3538, 87 L. Ed. 2d 661 (1985) (decided under former O.C.G.A. § 15-12-40).

2. Representation of Classes

Age. — Age is not a recognized class for purposes of jury representation. Bowen v. State, 244 Ga. 495, 260 S.E.2d 855 (1979), cert. denied, 446 U.S. 970, 100 S. Ct. 2952, 64 L. Ed. 2d 831 (1980) (decided under former Code 1933, § 59-106).

Eighteen to 21 age group does not constitute recognizable class for purposes of jury selection. Mooney v. State, 243 Ga. 373, 254 S.E.2d 337 (1979), cert. denied, 444 U.S. 886, 100 S. Ct. 179, 62 L. Ed. 2d 116 (1979) (decided under former Code 1933, § 59-106).

Eighteen to 29 year-olds. — Petitioner failed to establish that young adults aged 18 to 29 constituted a cognizable group in petitioner's attempt to show under-representation of young adults in the jury pool since the group was not defined and petitioner did not prove that the views held by adults aged 18 to 29 could not be represented by other members of the community. Willis v. Kemp, 838 F.2d 1510 (11th Cir. 1988), cert. denied, 489 U.S. 1059, 109 S. Ct. 1328, 103 L. Ed. 2d 596 (1989) (decided under former O.C.G.A. § 15-12-40).

Exclusion of certain age group from jury pool does not result in per se illegal array. Florence v. State, 243 Ga. 738, 256 S.E.2d 467, cert. denied, 444 U.S. 953, 100 S. Ct. 431, 62 L. Ed. 2d 325 (1979) (decided under former Code 1933, § 59-106).

Underrepresentation of young persons on the grand jury list did not violate requirement that the grand jury be drawn from a fair cross section of the community; the underrepresentation was explained by the jury commissioner's compliance with the legal requirement that only a limited number of the most experienced persons on the traverse jury list be selected for inclusion on the grand jury list. Parks v. State, 254 Ga. 403, 330 S.E.2d 686 (1985) (decided under former O.C.G.A. § 15-12-40).

Underrepresentation of Hispanics. — Supreme Court of Georgia found no need to address the trial court's finding regarding whether Hispanic persons were a cognizable group in Cobb County in order to decide the defendant's jury composition claim because: (1) the defendant failed to show any actual under-representation of Hispanic persons; (2) a slight over-representation of Hispanic persons who were citizens, in comparison to the total county population, was shown by the evidence; and (3) the defendant's own expert belied the defendant's claim of under-representation. Rice v. State, 281 Ga. 149, 635 S.E.2d 707 (2006) (decided under former O.C.G.A. § 15-12-40).

Women are an identifiable group for purposes of grand jury representation. Sanders v. State, 237 Ga. 858, 230 S.E.2d 291 (1976) (decided under former Code 1933, § 59-106).

Revision of Jury List

List not invalidated by delay. — Statutes prescribing the time for selecting the jury list are held to be merely directory, and, if the list is at a later date

Revision of Jury List (Cont'd)

properly selected and returned, the delay furnishes no ground of objection to the panel. Daughtery v. State, 59 Ga. App. 898, 2 S.E.2d 519 (1939) (decided under former Code 1933, § 59-106).

Provisions of this section are directory only and failure to revise the jury list in accordance with the timetable set forth does not invalidate the jury list or deprive the defendant of any right to which the defendant is entitled. Burney v. State, 244 Ga. 33, 257 S.E.2d 543, cert. denied, 444 U.S. 970, 100 S. Ct. 463, 62 L. Ed. 2d 385 (1979) (decided under former Code 1933, § 59-106).

Revision of jury lists not obligatory. — Trial court's order quashing an indictment based solely on the failure to revise the grand jury list during the time period set forth in former O.C.G.A. § 15-12-40(a)(1) was reversed as the statute was not obligatory, but directory in nature, merely suggesting a timetable for grand jury lists to be revised. State v. Parlor, 281 Ga. 820, 642 S.E.2d 54 (2007) (decided under former O.C.G.A. § 15-12-40).

Delay in revising list. — Fact that jury list should be revised every two years and that two years has elapsed since such revision had taken place has no effect on any rights guaranteed the defendant, and this is especially true if the court sets out in the record a reasonable ground for such slight delay. Daughtery v. State, 59 Ga. App. 898, 2 S.E.2d 519 (1939) (decided under former Code 1933, § 59-106).

If jury commissioners fail to revise the jury array for a period of three years and eight months, this alone did not invalidate the jury. Mooney v. State, 243 Ga. 373, 254 S.E.2d 337, cert. denied, 444 U.S. 886, 100 S. Ct. 179, 62 L. Ed. 2d 116 (1979) (decided under former Code 1933, § 59-106).

Failure of the jury commissioners to revise the jury array for a period of three years and eight months will not alone invalidate the jury. Florence v. State, 243 Ga. 738, 256 S.E.2d 467 (1979), cert. denied, 444 U.S. 953, 100 S. Ct. 431, 62 L. Ed. 2d 325 (1979) (decided under former Code 1933, § 59-106).

Revision found proper. — Revision of jury list which replaced 1,933 names (which had become ineligible because of age, medical reasons, non residence, or felony convictions) with eligible names was lawful under subsection (b) of O.C.G.A. § 15-12-40. Ballenger Paving Co. v. Gaines, 231 Ga. App. 565, 499 S.E.2d 722 (1998) (decided under former O.C.G.A. § 15-12-40).

Writ of prohibition to prevent revision. — Taxpayers not entitled to writ of prohibition to prevent revision of list. Teem v. Cox, 148 Ga. 175, 96 S.E. 131 (1918) (decided under former Penal Code 1910, §§ 816 and 819).

Citizens and taxpayers have no such interest as will authorize them to maintain a petition for the writ of prohibition to prevent the jury commissioners of the county from revising jury lists and making up jury boxes, and this principle is applicable to a case when a plaintiff is a citizen and taxpayer and also is an attorney at law. Ritcher v. Jordan, 184 Ga. 683, 192 S.E. 715 (1937) (decided under former Code 1933, § 59-106).

Proof of Jury Discrimination

1. In General

Blacks cannot be excluded. — Conviction cannot stand if the conviction is based on an indictment of the grand jury or verdict of the petit jury from which blacks are excluded by reason of their race. Whitus v. Georgia, 385 U.S. 545, 87 S. Ct. 643, 17 L. Ed. 2d 599 (1967) (decided under former Code 1933, § 59-106).

Systematic exclusion must be shown. — Trial will not be struck down because, provided this section has been complied with, it so happens that the particular grand jury panel which returns the indictment or presentment is not in fact representative, nor will the court's denial of the challenge be overturned unless it appears undeniably that there has been in fact a systematic exclusion of some significantly identifiable representative segment of the population of registered voters. Julian v. State, 134 Ga. App. 592, 215 S.E.2d 496 (1975) (decided under former Code 1933, § 59-106).

Age-qualified population of women must be compared with the total age-qualified population, not with the to-

tal population, to determine under-representation. West v. State, 252 Ga. 156, 313 S.E.2d 67 (1984) (decided under former O.C.G.A. § 15-12-40).

2. Burden of Proof

Burden of proving systematic exclusion. — Defendant has the burden of proving the existence of systematic racial exclusion in the selection of jurors. Sullivan v. State, 225 Ga. 301, 168 S.E.2d 133 (1969), vacated on other grounds, 408 U.S. 935, 92 S. Ct. 2854, 33 L. Ed. 2d 749 (1972) (decided under former Code 1933, § 59-106).

Burden is upon the defendant challenging the array of a jury to establish a prima facie case that there has been systematic exclusion of a distinct class of citizens. Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 (1976) (decided under former Code 1933, § 59-106).

To challenge array of grand jury successfully, appellants must prove prima facie case of unconstitutional discrimination. Welch v. State, 237 Ga. 665, 229 S.E.2d 390 (1976) (decided under former Code 1933, § 59-106).

No burden to prove commissioners performed duty. — There is no burden upon the state to prove that jury commissioners performed their duty as prescribed by this section. Garrett v. State, 133 Ga. App. 564, 211 S.E.2d 584 (1974), cert. denied, 423 U.S. 846, 96 S. Ct. 85, 46 L. Ed. 2d 68 (1975) (decided under former Code 1933, § 59-106).

Presumption that selection is according to law. — Presumption is that jurors are selected and drawn according to law and are upright and intelligent. Adams v. State, 139 Ga. App. 670, 229 S.E.2d 142 (1976), overruled on other grounds, Kyles v. State, 243 Ga. 490, 255 S.E.2d 10 (1979) (decided under former Code 1933, § 59-106).

Once prima facie case is made out burden shifts to prosecution. Whitus v. Georgia, 385 U.S. 545, 87 S. Ct. 643, 17 L. Ed. 2d 599 (1967) (decided under former Code 1933, § 59-106); Sullivan v. State, 225 Ga. 301, 168 S.E.2d 133 (1969), vacated on other grounds, 408 U.S. 935, 92 S. Ct. 2854, 33 L. Ed. 2d 749 (1972) (decided under former Code 1933, § 59-106); Cochran v. State, 151 Ga. App. 478, 260 S.E.2d 391 (1979) (decided under former Code 1933, § 59-106).

Mere affirmations of good faith are insufficient to dispel prima facie case of systematic exclusion when the opportunity for discrimination is present and when respondents fail to show that it is not practiced by the jury commissioners. Bonaparte v. Smith, 362 F. Supp. 1315 (S.D. Ga.), aff'd, 484 F.2d 956 (5th Cir. 1973), cert. denied, 415 U.S. 981, 94 S. Ct. 1572, 39 L. Ed. 2d 878 (1974) (decided under former Code 1933, § 59-106).

3. Elements of Prima Facie Case

What defendant must prove. — In order to show systematic exclusion of a distinct class of citizens, the defendant must demonstrate sufficiently to establish a prima facie case that: (1) the sources from which the jury list was drawn are tainted in that they provide the opportunity for discrimination; and (2) that use of these sources resulted in a substantial disparity between the percentages of the separate class on the jury list and in the population as a whole. Implicit in these requirements is that the defendant has the burden of showing that the group defendant seeks to prove has been systematically excluded constitutes a distinct and separate class of citizens. Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 (1976) (decided under former Code 1933, § 59-106); Fouts v. State, 240 Ga. 39, 239 S.E.2d 366 (1977) (decided under former Code 1933, § 59-106); Cochran v. State, 151 Ga. App. 478, 260 S.E.2d 391 (1979) (decided under former Code 1933, § 59-106).

In order to make out a prima facie case of jury discrimination, the defendant must establish: (1) that a distinctive group or recognizable class in the community has been excluded from the jury lists; (2) that an opportunity for discrimination against this group existed from the source of the jury list; and (3) that use of the infected source produced a significant disparity between the percentages found present in the source and those actually appearing on the jury panels. Bowen v. State, 244 Ga. 495, 260 S.E.2d 855 (1979), cert. denied, 446 U.S. 970, 100 S. Ct. 2952, 64 L.

Proof of Jury Discrimination (Cont'd)
3. Elements of Prima Facie Case (Cont'd)

Ed. 2d 831 (1980) (decided under former Code 1933, § 59-106); Berryhill v. State, 249 Ga. 442, 291 S.E.2d 685, cert. denied, 459 U.S. 981, 103 S. Ct. 317, 74 L. Ed. 2d 293 (1982) (decided under former O.C.G.A. § 15-12-40).

To make out a prima facie case of jury discrimination it must be proven that an opportunity for discrimination on account of race existed on the grounds that the source from which the potential jurors was drawn was racially biased, and that the use of such an "infected source" produced a significant disparity between the percentages of blacks found present in the source and those actually appearing on appellant's grand and petit jury panels. Cochran v. State, 155 Ga. App. 418, 271 S.E.2d 864 (1980) (decided under former Code 1933, § 59-106).

Gross disparity in representation may be sufficient. — Challenger must establish by satisfactory evidence purposeful racial discrimination, even if the figures are not proportionate, except that a gross and unexplained disparity may be sufficient alone to demonstrate such discrimination. Talley v. State, 120 Ga. App. 365, 170 S.E.2d 444 (1969) (decided under former Code 1933, § 59-106).

The defendant always has the burden of showing jury discrimination. Evidence of "spectacular" underrepresentation meets the burden, making a prima facie case of discrimination. The burden of going forward then shifts to the government to explain the figures in a nondiscriminatory way. Cochran v. State, 155 Ga. App. 418, 271 S.E.2d 864 (1980) (decided under former Code 1933, § 59-106).

4. Specific Cases

Determination of significant disparity. — It is the difference between the percentage of blacks on the grand jury list and the percentage in the population as a whole which actually determines whether a "significant disparity" exists to show discrimination. Cochran v. State, 151 Ga. App. 478, 260 S.E.2d 391 (1979) (decided under former Code 1933, § 59-106).

If defendant fails to establish impermissible disparity between percentages of blacks and women on a traverse jury panel and the source of these jurors in the population, the trial court is authorized to overrule defendant's challenge. Bowen v. State, 244 Ga. 495, 260 S.E.2d 855 (1979), cert. denied, 446 U.S. 970, 100 S. Ct. 2952, 64 L. Ed. 2d 831 (1980) (decided under former Code 1933, § 59-106).

Petitioner has established a prima facie case of jury discrimination if not one black selected to serve on panel of 60. Avery v. Georgia, 345 U.S. 559, 73 S. Ct. 891, 97 L. Ed. 1244 (1953), for comment, see 5 Mercer L. Rev. 207 (1953) (decided under former Code 1933, § 59-106).

Use of statistical evidence of underrepresentation. — When the evidence shows that in three major identifiable groups (sex, race, and age), women are 91.2 percent underrepresented in the grand jury pool and 69.7 percent in the traverse or petit jury pool; African Americans are 49.5 percent underrepresented in the grand jury pool and 61.7 percent in the traverse or petit jury pools, the jury commissioners were, as a matter of law, remiss in the execution of their statutory duties. Gould v. State, 131 Ga. App. 811, 207 S.E.2d 519, aff'd in part and rev'd in part, 232 Ga. 844, 209 S.E.2d 312 (1974) (decided under former Code 1933, § 59-106).

When the grand jury list is composed of 15 percent women and eight percent blacks, while the county population is 55 percent women and 22 and one-half percent blacks, then there is too marked a disparity as a matter of law and the grand jury list is not fairly representative of the community. Sanders v. State, 237 Ga. 858, 230 S.E.2d 291 (1976) (decided under former Code 1933, § 59-106).

Trial court did not err by ruling that the composition of the grand and traverse jury pools did not violate the Constitution, former O.C.G.A. § 15-12-40, and the Unified Appeal Procedure when, in a comparison of the 1990 Census numbers for Hispanics in the county with the percentage of Hispanics on the jury lists, it was shown that the absolute disparities were

within the legal limit. Morrow v. State, 272 Ga. 691, 532 S.E.2d 78 (2000), cert. denied, 532 U.S. 944, 121 S. Ct. 1408, 149 L. Ed. 2d 350 (2001) (decided under former O.C.G.A. § 15-12-40).

Calling commissioners as witnesses. — If the voter registration list is maintained on a segregated basis by the use of separate file cards for whites and blacks, there can be no question that the trial court erred in refusing to allow the defendant to call the jury commissioners as witnesses to explain the relatively small percentage of blacks on the grand jury list. Cochran v. State, 151 Ga. App. 478, 260 S.E.2d 391 (1979) (decided under former Code 1933, § 59-106).

If women comprised 54 percent of the population of the county but only 18 percent of the grand jury list, a challenge to the composition of the jury list was well-taken and convictions and sentences obtained with jurys from such list were set aside. Devier v. State, 250 Ga. 652, 300 S.E.2d 490 (1983), cert. denied, 471 U.S. 1009, 105 S. Ct. 1877, 85 L. Ed. 2d 169 (1985) (decided under former O.C.G.A. § 15-12-40).

An absolute disparity of 17.7% between the percentage of females in the total population and the percentage of females comprising a grand jury demonstrated a violation of former O.C.G.A. § 15-12-40. West v. State, 252 Ga. 156, 313 S.E.2d 67 (1984) (decided under former O.C.G.A. § 15-12-40).

Unconstitutional exclusion of women from jury list. — Defendant, under the following circumstances, was sentenced to die by a jury drawn from a list which unconstitutionally excluded women as: (1) there was a 22.7 percent variance between the percentage of women residing in the county and the percentage of women on the traverse jury list, immediately preceded by nearly a decade of even greater underrepresentation; (2) the largely subjective approach taken by the jury commissioners in composing the jury list, wherein no one was placed on the list who was not personally known by one of the commissioners, was susceptible of abuse; and (3) absent denials of discrimination, the state failed to offer an adequate explanation for the pattern of female underrepresentation. Bowen v. Kemp, 769 F.2d 672 (11th Cir. 1985), cert. denied, 478 U.S. 1021, 106 S. Ct. 3337, 92 L. Ed. 2d 742 (1986), vacated, 810 F.2d 1007 (11th Cir.), reinstated in part, 832 F.2d 546 (11th Cir. 1987), cert. denied, 485 U.S. 940, 108 S. Ct. 1120, 99 L. Ed. 2d 281, 485 U.S. 970, 108 S. Ct. 1247, 99 L. Ed. 2d 445 (1988) (decided under former O.C.G.A. § 15-12-40).

Petitioner established a violation of the Sixth Amendment's fair-cross-section requirement, notwithstanding jury commissioners' good faith belief that 39.36 percent representation of women on the master jury list "was in the ballpark guidelines that the Supreme Court would allow." Berryhill v. Zant, 858 F.2d 633 (11th Cir. 1988) (decided under former O.C.G.A. § 15-12-40).

A 6 percent disparity of blacks and a 7.1 percent disparity of women was not such an underrepresentation of blacks or of women on the grand jury list as to require reversal of defendant's murder conviction. Cochran v. State, 256 Ga. 113, 344 S.E.2d 402 (1986) (decided under former O.C.G.A. § 15-12-40).

Mere fact that a jury panel contains no black members when the accused is black will not, standing alone, support a challenge to the array and warrant the granting of a motion for a new jury. Hudson v. State, 185 Ga. App. 508, 364 S.E.2d 635 (1988) (decided under former O.C.G.A. § 15-12-40).

Fact that there are no jurors between ages of 18 and 21 not fatal. — In a challenge to the array of petit jurors, the fact that no one between the ages of 18 and 21 was on the jury panel does not, standing alone, prove that there were no jurors of that age in the jury box; nor does it show a deliberate exclusion of such persons from jury service. This evidence alone is not sufficient to prove the jury list is not a fairly representative cross-section of the intelligent and upright citizens of the county. Treadwell v. State, 129 Ga. App. 573, 200 S.E.2d 323 (1973) (decided under former Code 1933, § 59-106).

Young persons not "distinct group." — Defendant failed to demonstrate that persons between the ages of 18 and 23

Proof of Jury Discrimination (Cont'd)
4. Specific Cases (Cont'd)

constituted a "distinct and identifiable group in the community" for purposes of a challenge to the composition of the jury. Mincey v. State, 251 Ga. 255, 304 S.E.2d 882 (1983), cert. denied, 464 U.S. 977, 104 S. Ct. 414, 78 L. Ed. 2d 352 (1983) (decided under former O.C.G.A. § 15-12-40).

Underrepresentation of nonvoters on the traverse jury list did not provide a ground for challenge to the jury array, despite the defendant's assertion that blacks, young people, old people, and poor people tended to be underrepresented on voter registration lists; there was no substantial disparity shown between percentages of blacks in the county and on the jury list, and the defendant failed to demonstrate that young people, old people, and poor people were a cognizable group. Ingram v. State, 253 Ga. 622, 323 S.E.2d 801 (1984), cert. denied, 473 U.S. 911, 105 S. Ct. 3538, 87 L. Ed. 2d 661 (1985) (decided under former O.C.G.A. § 15-12-40).

Compilation of a traverse jury list by jury commissioners who simply used the official registered voters' list without supplementing the list and without realizing that nonvoters could be included could not be the basis for reversible error in the absence of a showing that supplementation was necessary to achieve a fair cross-section of the community. Ingram v. State, 253 Ga. 622, 323 S.E.2d 801 (1984), cert. denied, 473 U.S. 911, 105 S. Ct. 3538, 87 L. Ed. 2d 661 (1985) (decided under former O.C.G.A. § 15-12-40).

Impersonation of juror by convicted felon. — If it appeared from the extraordinary motion for a new trial that the name of one of the persons who served as a member of the jury was not in the jury box, that such person obtained a place on the jury by fraudulently impersonating another, and that before the trial this "juror" had twice been convicted of a felony, and that on discovering the same they acted promptly in presenting the extraordinary motion for a new trial, the facts alleged therein were such as to require the grant of a new trial, in the absence of any showing to the contrary. Wright v. Davis, 184 Ga. 846, 193 S.E. 757 (1937) (decided under former Code 1933, § 59-106).

Failure to make prima facie claim of intentional discrimination. — Defendant could not make a prima facie claim of intentional discrimination under the equal protection clause of the Fourteenth Amendment because the defendant failed to show that the jury selection procedure in the defendant's case was susceptible of abuse or was not racially neutral; the Supreme Court of Georgia adopted the use of the decennial census in the Unified Appeal Procedure as a benchmark for the very purpose of promoting adequate representation of cognizable groups, and the demographic changes at issue in the defendant's case were beyond the control of the county's jury commissioners. Williams v. State, 287 Ga. 735, 699 S.E.2d 25 (2010) (decided under former O.C.G.A. § 15-12-40).

Absolute disparity of Hispanic jurors under five percent did not violate statute. — Defendant's argument that Hispanic persons were misrepresented in the composition of the grand and traverse jury pools in violation of the Sixth and Fourteenth Amendments and former O.C.G.A. § 15-12-40 was rejected because the defendant failed to show any actual misrepresentation of this group: the defendant's own expert witness testified that when using 2000 Census data, absolute disparity figures for Hispanics were under the five percent threshold, although when adjusted to account for the citizenship rate of Hispanic persons, the absolute disparity figure showed over-representation by 6.12 percent for the grand jury list. Thus, the absolute disparity figures were well within the constitutional requirements of 10 percent. Foster v. State, 288 Ga. 98, 701 S.E.2d 189 (2010) (decided under former O.C.G.A. § 15-12-40).

5. Pleading and Practice

Defect which goes to legality of selection of panel of jurors is ground for challenge to array. Derryberry v. Higdon, 116 Ga. App. 381, 157 S.E.2d 559 (1967) (decided under former Code 1933, § 59-106).

White defendant lacked standing to make an equal protection claim against the state for excluding all black jurors by use of preemptory challenges. McGuire v. State, 185 Ga. App. 233, 363 S.E.2d 850 (1987) (decided under former O.C.G.A. § 15-12-40).

Challenge to array waived if not made before verdict. — In the absence of an objection in the nature of a challenge to the array of the panel properly made before the verdict, a party in a civil trial waives the right and has no ground for complaint after verdict. Derryberry v. Higdon, 116 Ga. App. 381, 157 S.E.2d 559 (1967) (decided under former Code 1933, § 59-106).

Challenge to array of grand jury waived if not made before indictment. — Plea in abatement by which the defendant contended that the indictment returned against the defendant is void because the grand jury returning the indictment was chosen from the tax digest rather than from the voters' list as required, which plea is not filed until the case is sounded for trial and which sets forth therein no reason why the defendant could not have challenged the array of the grand jurors prior to the indictment, is properly overruled. Wooten v. State, 224 Ga. 106, 160 S.E.2d 403 (1968) (decided under former Code 1933, § 59-106).

Challenge to the array of grand jurors may not be entertained by a trial court unless it is made prior to the return of the indictment or the defendant has shown that the defendant had neither actual nor constructive knowledge of the alleged illegal composition of the grand jury prior to the time the indictment was returned. Tennon v. Ricketts, 574 F.2d 1243 (5th Cir. 1978), cert. denied, 439 U.S. 1091, 99 S. Ct. 874, 59 L. Ed. 2d 57 (1979) (decided under former Code 1933, § 59-106).

Fugitives. — Undisputed fact is that the defendant fled the state immediately after the homicide. Although the defendant presumed that the state would wish to arrest the defendant, the defendant deliberately chose to be denied the opportunity to "notice before indictment". Defendant was indicted while the defendant was yet an unlocated fugitive in a distant state. After apprehension, the defendant says that the federal Constitution guarantees the defendant the right to proceed as if the defendant had not fled; that is, the defendant should be treated more advantageously than those who remain within the jurisdiction and submit in an orderly manner to prescribed procedures. However, the Constitution does not mandate such special treatment for fugitives. Tennon v. Ricketts, 574 F.2d 1243 (5th Cir. 1978), cert. denied, 439 U.S. 1091, 99 S. Ct. 874, 59 L. Ed. 2d 57 (1979) (decided under former Code 1933, § 59-106).

If there was no challenge to the initial programmed randomness of selecting jurors from a scan of the entire list of registered voters, defendant was not entitled to an additional final computer printout comprised of another entirely random arrangement of the previously randomly selected individuals. Larmon v. State, 177 Ga. App. 763, 341 S.E.2d 237, aff'd, 256 Ga. 228, 345 S.E.2d 587 (1986) (decided under former O.C.G.A. § 15-12-40).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 59-106 and former O.C.G.A. § 15-12-42 are included in the annotations for this Code section.

Proper interpretation of this section is that jury commissioners are to compose the jury list by selecting a fairly representative cross-section of the county by placing at least 50 percent of the registered voters on the jury list; as long as it appears that the selection of the registered voters, from the voters' list most recently revised by the county board of registrars or other county election officials, is a fairly representative cross-section of the intelligent and upright citizens of the county, the requirements of this section are satisfied. 1978 Op. Att'y Gen. No. 78-52 (decided under former Code 1933, § 59-106).

Military personnel. — Supremacy clause of U.S. Constitution prohibits

United States military personnel from serving on state juries. 1980 Op. Att'y Gen. No. 80-125 (decided under former Code 1933, § 59-106).

Possibility of conflict of interest between grand jury and county board of tax equalization would not constitute disqualification for service upon either body, but would be a question for the court at the time of jury selection. 1973 Op. Att'y Gen. No. U73-111 (decided under former Code 1933, § 59-106).

Person operating computer need not be court official. — In those counties utilizing mechanical or electronic means for the selection of jurors, the person who operates the computer pursuant to the clerk's direction need not be a court official. 1982 Op. Att'y Gen. No. U82-5 (decided under former O.C.G.A. § 15-12-42).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 101 et seq., 119 et seq., 128.

C.J.S. — 50A C.J.S., Juries, §§ 306, 308, 311 et seq.

ALR. — Effect of, and remedies for, exclusion of eligible class or classes of persons from jury list in criminal case, 52 ALR 919.

Irregularity in drawing names for a jury panel as ground of complaint by defendant in criminal prosecution, 92 ALR 1109.

Eligibility of women as jurors, 157 ALR 461.

Membership in secret order or organization for the suppression of crime as proper subject of examination, or ground of challenge, of juror, 158 ALR 1361.

Exclusion of women from grand or trial jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction, 9 ALR2d 661; 70 ALR5th 587.

Validity of enactment requiring juror to be an elector or voter or have qualifications thereof, 78 ALR3d 1147.

Validity of requirement or practice of selecting prospective jurors exclusively from list of registered voters, 80 ALR3d 869.

Validity of statutory classifications based on population — jury selection statutes, 97 ALR3d 434.

Age group underrepresentation in grand jury or petit jury venire, 62 ALR4th 859.

Validity and application of computerized jury selection practice or procedure, 110 ALR5th 329.

Prejudicial effect of juror's inability to comprehend English, 117 ALR5th 1.

15-12-40.2 through 15-12-43.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-17/HB 415, effective July 1, 2012.

Editor's notes. — These Code sections were based on Ga. L. 1878-79, p. 27, §§ 3, 4; Ga. L. 1878-79, p. 34, §§ 2-4; Code 1882, § 3910f; Ga. L. 1889, p. 84, § 1; Penal Code 1895, § 820; Penal Code 1910, § 821; Code 1933, § 59-109; Ga. L. 1976, p. 438, § 3; Code 1981, § 15-12-40.2, enacted by Code 1882, § 3911a; Penal Code 1895, § 817; Penal Code 1910, § 818; Penal Code 1895, § 819; Code 1933, § 59-107; Code 1882, § 3910e; Penal Code 1910, § 820; Code 1933, § 59-108; Ga. L. 1962, p. 117, § 1; Ga. L. 1971, p. 626, § 1; Ga. L. 1975, p. 825, § 1; Ga. L. 1976, p. 438, § 2; Ga. L. 1978, p. 1377, § 1; Ga. L. 1985, p. 1511, § 3; Ga. L. 1989, p. 427, § 2; Ga. L. 1999, p. 890, § 2; Ga. L. 2005, p. 60, § 15/HB 95; Ga. L. 2011, p. 59, § 1-17/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-43.1. Review of county master jury list.

On and after July 1, 2012, upon the request of a party or his or her attorney, the clerk shall make available for review by such persons the county master jury list. (Code 1981, § 15-12-43.1, enacted by Ga. L. 2011, p. 59, § 1-21/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1882, § 3910f; former Code 1933, § 59-109; and former O.C.G.A. § 15-12-43 are included in the annotations for this Code section.

Constitutionality. — Statute was not unconstitutionally vague, indefinite, or uncertain, and does not violate U.S. Const., amends. 13 and 14. Robinson v. State, 225 Ga. 167, 167 S.E.2d 158 (1969) (decided under former Code 1933, § 59-109).

Certificate of jury commissioners can be attached during trial, nunc pro tunc. Jackson v. State, 76 Ga. 551 (1886) (decided under former Code 1882, § 3910f).

Clerk need not sign certificate. Carr v. State, 76 Ga. 592 (1886) (decided under former Code 1882, § 3910f).

Challenge on ground that names of certain jurors did not appear on list must be made before verdict. Jordan v. State, 119 Ga. 443, 46 S.E. 679 (1904) (decided under former Code 1882, § 3910f); Lumpkin v. State, 152 Ga. 229, 109 S.E. 664 (1921) (decided under former Penal Code 1910, § 821).

Fact that jurors' names were in alphabetical order or their residences were on the same street did not cause substantial underrepresentation of any distinct and identifiable group in the community. Larmon v. State, 256 Ga. 228, 345 S.E.2d 587 (1986) (decided under former O.C.G.A. § 15-12-43).

Cited in Fudge v. State, 190 Ga. 340, 9 S.E.2d 259 (1940) (decided under former Code 1933, § 59-109). Whitus v. Georgia, 385 U.S. 545, 87 S. Ct. 643, 17 L. Ed. 2d 599 (1967) (decided under former Code 1933, § 59-109). Lawson v. State, 242 Ga. 744, 251 S.E.2d 304 (1978) (decided under former Code 1933, § 59-109).

15-12-44. Procedures on loss or destruction of jury box or jury list.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-22/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Orig. Code 1863, § 3844; Code 1868, § 3864; Ga. L. 1873, p. 41, § 1; Code 1873, § 3941; Ga. L. 1880-81, p. 116, § 1; Code 1882, § 3941; Penal Code 1895, § 868; Penal Code 1910, § 872; Code 1933, § 59-110; Ga. L. 1976, p. 438, § 4; Ga. L. 2011, p. 59, § 1-22/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-44.1. Safeguarding of master jury lists; development of state-wide system to ensure preservation of jury data.

The state-wide master jury lists and county master jury lists shall be safeguarded against catastrophic, routine, or any other form of loss or destruction, and on and after July 1, 2012, the council shall develop, implement, and provide a state-wide system to ensure that jury data for all counties of this state shall be systematically preserved in perpetuity and that all jury list data can be restored in the event of loss. (Code 1981, § 15-12-44.1, enacted by Ga. L. 2011, p. 59, § 1-23/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

15-12-45. Loss or destruction of precepts.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-24/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Orig. Code 1863, § 3844; Code 1868, § 3864; Ga. L. 1873, p. 41, § 2; Code 1873, § 3941; Ga. L. 1880-81, p. 116, § 3; Code 1882, §§ 3941, 3941a; Penal Code 1895, §§ 868, 869; Penal Code 1910, §§ 872, 873; Code 1933, §§ 59-110, 59-111; Ga. L. 1976, p. 438, § 4; Ga. L. 2011, p. 59, § 1-24/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-46. Adjournment of term pending choosing of trial or grand jurors.

If juries have not been chosen for any regular term of the superior court and there is not sufficient time for choosing and summoning prospective trial and grand jurors to serve at the regular term, the judge of the superior court for the county in which the failure has occurred, by order passed at chambers, may adjourn the court to another day, may require the requisite number of prospective trial and grand jurors to be summoned, and may enforce their attendance at the term so called. (Ga. L. 1880-81, p. 116, § 4; Code 1882, § 3941b; Penal Code 1895, § 870; Penal Code 1910, § 874; Code 1933, § 59-116; Ga. L. 2011, p. 59, § 1-25/HB 415; Ga. L. 2014, p. 862, § 9/HB 1078.)

The 2014 amendment, effective April 29, 2014, inserted "trial and grand" near the beginning and substituted "trial and grand jurors" for "grand and trial jurors" near the end of this Code section.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

ARTICLE 4

GRAND JURIES

RESEARCH REFERENCES

ALR. — Duty of prosecutor to present exculpatory evidence to state grand jury, 49 ALR5th 639.

PART 1

GENERAL PROVISIONS

Cross references. — Grand jury investigations, § 16-11-10. Indictments generally, § 17-7-50 et seq. Selection of members of county boards of education by grand juries, § 20-2-51. Supervision by grand jury of preparation of voting machines, § 21-2-327. Proceedings before grand juries regarding boundary line changes, § 36-3-1 et seq.

JUDICIAL DECISIONS

Powers and duties not alterable by special laws. — Powers and duties of grand jury as stated in these statutes cannot be altered to enlarge, diminish, modify, or change them by any special laws. Bussell v. Youngblood, 239 Ga. 553, 238 S.E.2d 89 (1977).

Cited in Sweeney v. Balkcom, 358 F.2d 415 (5th Cir. 1966).

OPINIONS OF THE ATTORNEY GENERAL

Neither a district attorney nor members of the district attorney's staff should be present for deliberations of the grand jury. 1997 Op. Att'y Gen. No. U97-3.

RESEARCH REFERENCES

ALR. — Matters within investigating powers of grand jury, 22 ALR 1356; 106 ALR 1383; 120 ALR 437.

Power of grand jury to contract, 26 ALR 605.

Duration of imprisonment for refusal to answer question as a witness before the grand jury, 28 ALR 1364.

Communicating with grand jury as contempt, 29 ALR 489.

Prejudice of member of grand jury against defendant as ground of attack on indictment, 88 ALR 899.

Communicating with grand jury or member thereof as a criminal offense, 112 ALR 319.

Member of grand or petit jury as officer within constitutional or statutory provisions in relation to oath or affirmation, 118 ALR 1098.

Contemporaneous existence or functioning of two or more grand juries, 121 ALR 814.

Absence of grand jurors during hearing as affecting indictment, 156 ALR 248.

Right to challenge personnel of grand jury, 169 ALR 1169.

Libel and slander: proceedings, presentments, investigations, and reports of grand jury as privileged, 48 ALR2d 716.

Power of court to control evidence or witnesses going before grand jury, 52 ALR3d 1316.

Presence of unauthorized persons during state grand jury proceedings as affecting indictment, 23 ALR4th 397.

Individual's right to present complaint or evidence of criminal offense to grand jury, 24 ALR4th 316.

Age group underrepresentation in grand jury or petit jury venire, 62 ALR4th 859.

Presence of persons not authorized by Rule 6(d) of Federal Rules of Criminal Procedure during session of grand jury as warranting dismissal of indictment, 68 ALR Fed. 798.

Civil liability of witness in action under 42 USCS § 1983 for deprivation of civil rights, based on testimony given at pretrial criminal proceeding, 94 ALR Fed. 892.

15-12-60. Qualifications of grand jurors; impact of ineligibility.

(a) Any citizen of this state 18 years of age or older who has resided in the county for at least six months preceding the time of service shall be eligible and liable to serve as a grand juror.

(b) Any person who holds any elective office in state or local government or who has held any such office within a period of two years preceding the time of service as a grand juror shall not be eligible to serve as a grand juror.

(c) The following individuals shall not be eligible to serve as a grand juror:

(1) Any individual who has been convicted of a felony in a state or federal court who has not had his or her civil rights restored;

(2) Any individual who has been judicially determined to be mentally incompetent;

(3) Any individual charged with a felony offense and who is in a pretrial release program, a pretrial release and diversion program, or a pretrial intervention and diversion program, as provided for in Article 4 of Chapter 18 of Title 15 or Article 5 of Chapter 8 of Title 42 or pursuant to Uniform Superior Court Rule 27, a similar diversion program from another state, or a similar federal court diversion program for a felony offense;

(4) Any individual sentenced for a felony offense pursuant to Code Section 16-13-2 who has not completed the terms of his or her sentence;

(5) Any individual serving a sentence for a felony offense pursuant to Article 3 of Chapter 8 of Title 42 or serving a first offender sentence for a felony offense pursuant to another state's law; and

(6) Any individual who is participating in a drug court division, mental health court division, veterans court division, a similar court program from another state, or a similar federal court program for a felony offense.

(d) If an indictment is returned, and a grand juror was ineligible to serve as a grand juror pursuant to subsection (c) of this Code section,

such indictment shall not be quashed solely as a result of such ineligibility. (Orig. Code 1863, § 3821; Code 1868, § 3841; Code 1873, § 3906; Code 1882, § 3906; Ga. L. 1887, p. 53, § 1; Penal Code 1895, § 811; Penal Code 1910, § 811; Code 1933, § 59-201; Ga. L. 1953, Nov.-Dec. Sess., p. 284, § 3; Ga. L. 1973, p. 726, § 1; Ga. L. 1976, p. 438, § 6; Ga. L. 1977, p. 341, § 1; Ga. L. 1982, p. 779, §§ 1, 2; Ga. L. 1983, p. 3, § 12; Ga. L. 2011, p. 59, § 1-26/HB 415; Ga. L. 2012, p. 173, § 3-3/HB 665; Ga. L. 2015, p. 693, § 1A-1/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of subsection (c) for the former provisions, which read: "Any person who has been convicted of a felony in a state or federal court who has not had his or her civil rights restored and any person who has been judicially determined to be mentally incompetent shall not be eligible to serve as a grand juror."; and added subsection (d). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the effect on jury service of a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979). For annual survey on criminal law, see 64 Mercer L. Rev. 83 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration
Constitutionality
Incompetency
1. In General
2. Elected Office
3. Convicted Felons
Practice and Procedure

General Consideration

Grand jury without power to perform civil duties. — Grand jury is an informing or accusing body rather than a judicial tribunal and, in the absence of special authorization, the grand jury has no power or jurisdiction to perform duties of a civil nature. Hobbs v. Peavy, 210 Ga. 671, 82 S.E.2d 224 (1954).

Cited in Gould v. State, 131 Ga. App. 811, 207 S.E.2d 519 (1974); Hall v. State, 139 Ga. App. 142, 227 S.E.2d 917 (1976); Hudson v. State, 240 Ga. 70, 239 S.E.2d 330 (1977); Berry v. Cooper, 577 F.2d 322 (5th Cir. 1978); Sullivan v. State, 246 Ga. 426, 271 S.E.2d 823 (1980); Cochran v. State, 256 Ga. 113, 344 S.E.2d 402 (1986); Narramore v. State, 181 Ga. App. 254, 351 S.E.2d 643 (1986); Cochran v. State, 256 Ga. 113, 344 S.E.2d 402 (1986); Hamilton v. State, 185 Ga. App. 536, 365 S.E.2d 120 (1987); Bryant v. Vowell, 282 Ga. 437, 651 S.E.2d 77 (2007); Harper v. State, 283 Ga. 102, 657 S.E.2d 213 (2008); Keever v. Dellinger, 291 Ga. 860, 734 S.E.2d 874 (2012).

Constitutionality

Scheme for selecting grand juries is not inherently unfair, or necessarily

Constitutionality (Cont'd)

incapable of administration without regard to race, and federal courts are not powerless to remedy unconstitutional departures from Georgia law by declaratory and injunctive relief. Turner v. Fouche, 396 U.S. 346, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970).

Test as to whether particular qualification is constitutional in selection of jury members is whether conditions imposed are rationally related to valid state purpose. Gibson v. State, 236 Ga. 874, 226 S.E.2d 63, cert. denied, 429 U.S. 986, 97 S. Ct. 507, 50 L. Ed. 2d 598 (1976).

Age requirement. — Requirement that grand jurors shall be 21 years of age is not an invalid qualification in light of the requirement that grand jurors be experienced. Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 (1976).

Six-month residency requirement is constitutional because the requirement provides a minimum period of time in which to evaluate potential candidates for the jury, and is thus related to the state's interest in determining who are upright and intelligent citizens. Gibson v. State, 236 Ga. 874, 226 S.E.2d 63, cert. denied, 429 U.S. 986, 97 S. Ct. 507, 50 L. Ed. 2d 598 (1976).

Standards of intelligence, uprightness, and experience. — Standards of intelligence, uprightness, and experience established for jurors do not violate either the U.S. or Georgia Constitution. White v. State, 230 Ga. 327, 196 S.E.2d 849, appeal dismissed, 414 U.S. 886, 94 S. Ct. 222, 38 L. Ed. 2d 134 (1973).

Members of grand jury may not be selected in manner that discriminates against persons of particular race or religion. However, the basic theory of the functions of a grand jury does not require that grand jurors should be impartial and unbiased. Creamer v. State, 150 Ga. App. 458, 258 S.E.2d 212 (1979).

It is an illegal exercise of the commissioners' power and discretion to exclude Jews when revising jury lists. Bashlor v. Bacon, 168 Ga. 370, 147 S.E. 762 (1929).

Defendant must prove prima facie case of discrimination. — Burden is upon the defendant challenging the array of a jury to establish a prima facie case that there has been systematic exclusion of a distinct class of citizens. Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 (1976).

To challenge array of grand jury successfully, appellants must prove prima facie case of unconstitutional discrimination. Welch v. State, 237 Ga. 665, 229 S.E.2d 390 (1976).

Elements of prima facie case. — In order to show systematic exclusion of a distinct class of citizens, the defendant must demonstrate sufficiently to establish a prima facie case that: (1) the sources from which the jury list was drawn are tainted in that the sources provide the opportunity for discrimination; and (2) use of these sources resulted in a substantial disparity between the percentages of the separate class on the jury list and in the population as a whole. Implicit in these requirements is that the defendant has the burden of showing that the group the defendant seeks to prove has been systematically excluded constitutes a distinct and separate class of citizens. Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 (1976).

Incompetency

1. In General

Depositors of bank serving to indict director are disqualified. Stapleton v. State, 19 Ga. App. 36, 90 S.E. 1029 (1916).

Juror not convicted of crime. — Trial court did not err in denying the defendant's supplement to the defendant's plea in abatement because the defendant did not show that the jury commissioner was incapable of selecting qualified jurors who met the requirements of O.C.G.A. § 15-12-60; although a grand juror was reprimanded by the State Election Board and assessed a fine for assisting voters with absentee ballots and failing to sign the ballot envelopes as required by law, the grand juror was never convicted or charged with a crime. Worthy v. State, 307 Ga. App. 297, 704 S.E.2d 808 (2010).

2. Elected Office

Appointment versus election to office. — Persons who hold or have recently

held elective office are prohibited from serving on grand juries, but a grand juror appointed to the jury commission is not elected. Spears v. State, 296 Ga. 598, 769 S.E.2d 337 (2015).

Director of development authority. — Director of a town's downtown development authority who is elected by a caucus of property owners is not incompetent to serve as a grand juror; such a selection is not an election by citizens registered to vote and voting at an election. Ingram v. State, 253 Ga. 622, 323 S.E.2d 801 (1984), cert. denied, 473 U.S. 911, 105 S. Ct. 3538, 87 L. Ed. 2d 661 (1985).

City council member ineligible for grand jury service. — Trial court erred in denying the defendant's motion to quash an indictment because a city council member, who was an elected local government officeholder, was ineligible to serve on a grand jury under O.C.G.A. § 15-12-60(b)(1); nonetheless, the city council member served on the grand jury that issued the indictment against the defendant. State v. Dempsey, 290 Ga. 763, 727 S.E.2d 670 (2012).

Grand juror was ineligible to serve because juror was an elected city councilman at the time of grand jury service. Garza v. State, 325 Ga. App. 505, 753 S.E.2d 651 (2014).

3. Convicted Felons

Pre-1976 convictions. — This section shows no legislative intent that the statute be applied retroactively to a conviction rendered prior to 1976. Gunn v. State, 245 Ga. 359, 264 S.E.2d 862 (1980).

Out-of-state and federal convictions. — Person who has been convicted of felonious assault in Tennessee in 1954 was not excluded from grand jury service because paragraph (b)(2) of O.C.G.A. § 15-12-60 either: (1) does not apply to convictions rendered prior to 1976; or (2) does not disqualify a juror convicted of a criminal offense in another state, or in the federal system. Clark v. State, 255 Ga. 370, 338 S.E.2d 269 (1986).

Juror, convicted after indictment returned, not incompetent. — Member of the grand jury who is convicted of a felony after an indictment is returned is not incompetent to serve if, although the offense was committed prior to the indictments, the juror was not charged with a crime or arrested at the time of the juror's service as a grand juror. Owens v. State, 251 Ga. 313, 305 S.E.2d 102 (1983).

Practice and Procedure

When challenge must be made. — Challenge, based on grounds of disqualification, must be made before finding of indictment. Folds v. State, 123 Ga. 167, 51 S.E. 305 (1905); Stapleton v. State, 19 Ga. App. 36, 90 S.E. 1029 (1916); Kato v. State, 33 Ga. App. 342, 126 S.E. 266 (1925).

Points relating to the number of grand jurors drawn and their competency should be made before the true bill is found, and not on the trial before the traverse jury, especially if the defendant is under a charge that apprises defendant that the case will go before the grand jury, by being under bond to appear, or confined in jail to answer the offense at court. Hayes v. State, 138 Ga. App. 666, 226 S.E.2d 819 (1976).

Waiver of challenge. — If a defendant is represented by counsel at a commitment hearing and if no challenge to the array of grand jurors is made on the basis of incompetence until after the indictment, any contention that the grand jury is not properly constituted will be treated as having been waived. Scott v. State, 121 Ga. App. 458, 174 S.E.2d 243 (1970).

As a general rule, a grand jury challenge must be made prior to the return of the indictment or the challenge is deemed waived. Dawson v. State, 166 Ga. App. 515, 304 S.E.2d 570 (1983).

Appellants waived the appellants' challenge to the indictment based on the composition of the grand jury because an elected official served on the grand jury that returned the indictment since the appellants failed to challenge the indictment on the ground that the grand jury was illegally constituted until the appellants filed amended motions for new trial more than seven years after the statutory deadline for such a claim. Bighams v. State, 296 Ga. 267, 765 S.E.2d 917 (2014).

Lack of notice or opportunity to challenge. — Accused may challenge later if the accused did not have full notice

Practice and Procedure (Cont'd)

or opportunity to challenge before the finding of the indictment. Edwards v. State, 121 Ga. 590, 49 S.E. 674 (1905); Parris v. State, 125 Ga. 777, 54 S.E. 751 (1906).

Late challenge if juror's name omitted from list. — If the omission of the challenged grand juror's name from the grand juror list for the term prevented the defendant from challenging the grand juror prior to the return of the indictment, it was permissible for defendant to challenge the juror afterward. Dawson v. State, 166 Ga. App. 515, 304 S.E.2d 570 (1983).

Names presumed to have been made available. — It will be presumed that the grand jury has been properly chosen and that the names have been available to the defendant in advance. Accordingly, failure to make a timely challenge to the competency of certain grand jurors must be considered as a waiver of any right of challenge. Simpson v. State, 100 Ga. App. 726, 112 S.E.2d 314 (1959).

Qualifications presumed to have been met. — If, apparently believing that the absence of the grand juror's name on the grand juror list itself constituted sufficient ground to quash the indictment, the defendant did not attempt to show that the grand juror was not qualified to serve, but the state showed that the grand juror was registered to vote in the county, without any showing to the contrary, the Court of Appeals presumed that the other qualifications of O.C.G.A. § 15-12-60 were met. Dawson v. State, 166 Ga. App. 515, 304 S.E.2d 570 (1983).

Trial court required to make factual finding. — With regard to a criminal case wherein the defendant was indicted for murder, the trial court erred by denying the defendant's challenge to the grand jury on the ground that someone other than the person intended to be summoned served on the grand jury, because the trial court never made a factual finding that the wrong person served on the grand jury. Harper v. State, 283 Ga. 102, 657 S.E.2d 213 (2008).

Ineffective assistance of counsel not found. — Defense counsel did not provide ineffective assistance in failing to conduct a proper pretrial investigation as defendant failed to show that a grand juror was not qualified because the grand juror was a convicted felon; further, even if a grand juror was the father of a prosecution witness, defendant failed to show prejudice as the disqualification of a grand juror under O.C.G.A. § 15-12-70 was not a viable ground for quashing an indictment. Stevenson v. State, 272 Ga. App. 335, 612 S.E.2d 521 (2005).

OPINIONS OF THE ATTORNEY GENERAL

Justice of peace (now magistrate) is eligible to serve on county grand jury. 1954-56 Op. Att'y Gen. p. 92.

Conviction resulting from nolo contendere plea cannot be used to impose any disability including disqualification from voting, holding public office, and jury service. 1983 Op. Att'y Gen. No. 83-33.

Conviction for misdemeanor does not affect one's eligibility to serve on either a grand or trial jury. 1983 Op. Att'y Gen. No. 83-33.

Pardon or restoration of civil rights is necessary to serve on grand jury, even if the sentence has been completed, if the conviction was for any felony. 1983 Op. Att'y Gen. No. 83-33.

Person who has been placed on probation pursuant to the First Offender Act, O.C.G.A. § 42-8-60 et seq., does not become incompetent to serve on a grand or petit jury under paragraph (b)(2) of O.C.G.A. § 15-12-60 either before or after being discharged without court adjudication of guilt. 1990 Op. Att'y Gen. No. U90-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 9. 47 Am. Jur. 2d, Jury, § 142 et seq.

C.J.S. — 38A C.J.S., Grand Juries, § 13 et seq.

ALR. — Effect of, and remedies for, exclusion of eligible class or classes of persons from jury list in criminal case, 52 ALR 919.

Eligibility of women as jurors, 157 ALR 461.

Membership in secret order or organization for the suppression of crime as proper subject of examination, or ground of challenge, of juror, 158 ALR 1361.

Exclusion of women from grand or trial jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction, 9 ALR2d 661; 70 ALR5th 587.

Validity of indictment where grand jury heard incompetent witness, 39 ALR3d 1064.

Age group underrepresentation in grand jury or petit jury venire, 62 ALR4th 859.

Disqualification or exemption of juror for conviction of, or prosecution for, criminal offense, 75 ALR5th 295.

15-12-61. Number of grand jurors; votes necessary for indictment or presentment; alternate grand jurors; report on preceding grand jury by foreperson or clerk.

(a) A grand jury shall consist of not less than 16 nor more than 23 persons. The votes of at least 12 grand jurors shall be necessary to find a bill of indictment or to make a presentment. Three alternate grand jurors may be sworn and, subject to the maximum number fixed in this subsection, may serve when any grand juror dies, is discharged for any cause, becomes ill, or is for other cause absent during any sitting. Alternate grand jurors may serve as members of inspection and examination committees with the same authority and responsibilities as grand jurors and without regard to the maximum limitation on the number of grand jurors fixed herein. However, nothing in this Code section shall limit the authority of a judge of the superior court to replace a grand juror.

(b) The grand jury shall be authorized to request the foreperson of the previous grand jury to appear before it for the purpose of reviewing and reporting the actions of the immediately preceding grand jury if the succeeding grand jury determines that such service would be beneficial. While serving a succeeding grand jury, the foreperson of the immediately preceding grand jury shall receive the same compensation as other members of the grand jury. Any person serving as foreperson of a grand jury and then requested to report to an immediately succeeding grand jury shall not be eligible to again serve as a grand juror for one year following the conclusion of such earlier service. (Laws 1799, Cobb's 1851 Digest, p. 547; Ga. L. 1869, p. 139, § 5; Code 1873, § 3914; Code 1882, § 3914; Penal Code 1895, § 812; Penal Code 1910, § 812; Code 1933, § 59-202; Ga. L. 1967, p. 590, § 1; Ga. L. 1978, p. 906, § 1; Ga. L. 1979, p. 676, § 1; Ga. L. 1994, p. 607, § 3; Ga. L. 2001, p. 4, § 15; Ga. L. 2011, p. 59, § 1-27/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Grand jury larger than maximum size. — Findings of grand jury composed of over 23 persons are void. Evans v. State, 17 Ga. App. 120, 86 S.E. 286 (1915).

Grand jury was properly comprised. — Trial court did not err in failing to grant the defendant a new trial on the ground that the grand jury was composed of 25 people in violation of O.C.G.A. § 15-12-61(a) since the claim was waived, and the trial court found as a fact that the grand jury was properly comprised. Daly v. State, 285 Ga. App. 808, 648 S.E.2d 90 (2007), cert. denied, 2007 Ga. LEXIS 659 (Ga. 2007); 553 U.S. 1039, 128 S. Ct. 2441, 171 L. Ed. 2d 241 (2008).

Failure of some jurors to vote on indictment. — If the indictment showed that all 23 grand jurors voted on the indictment when, in fact, two of the grand jurors were not present and did not vote, the criteria of O.C.G.A. § 15-12-61 was met since the defendant did not show that more than two of the 23 persons on the grand jury did not vote, and it was assumed that the remaining 21 members voted to find a bill of indictment. Ellis v. State, 181 Ga. App. 630, 353 S.E.2d 822 (1987).

Cited in Davis v. State, 72 Ga. App. 347, 33 S.E.2d 728 (1945); Woodring v. State, 130 Ga. App. 247, 202 S.E.2d 696 (1973); Echols v. State, 255 Ga. 311, 338 S.E.2d 259 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 13.

C.J.S. — 38A C.J.S., Grand Juries, § 55.

ALR. — Validity of indictment as affected by substitution or addition of grand jurors after commencement of investigation, 2 ALR4th 980.

15-12-62. Selection of grand jurors.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-28/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1869, p. 139, § 2; Code 1873, § 3911; Ga. L. 1874, p. 20, § 1; Code 1882, § 3911; Penal Code 1895, § 822; Penal Code 1910, § 823; Code 1933, § 59-203; Ga. L. 1966, p. 470, § 1; Ga. L. 1975, p. 809, § 1; Ga. L. 1976, p. 438, § 7; Ga. L. 1987, p. 953, § 2; Ga. L. 2011, p. 59, § 1-28/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-62.1. Choosing of grand jurors.

The clerk shall choose a sufficient number of persons to serve as grand jurors from the county master jury list in the same manner as trial jurors are chosen. The clerk, not less than 20 days before the commencement of each term of court at which a regular grand jury is impaneled, shall issue summonses by mail to the persons chosen for grand jury service. (Code 1981, § 15-12-62.1, enacted by Ga. L. 2011, p. 59, § 1-29/HB 415; Ga. L. 2014, p. 862, § 10/HB 1078.)

The 2014 amendment, effective April 29, 2014, substituted the present first sentence for the former first sentence, which read "On and after July 1, 2012, the clerk shall choose a sufficient number of persons to serve as grand jurors.", and deleted the former last sentence, which read: "The clerk shall choose grand jurors in the manner specified by and in accordance with the rules adopted by the Supreme Court."

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Editor's note. — In light of the similarity of the statutory provisions, annotations decided under Ga. L. 1869, p. 139, § 2; Code 1873, § 3911; Code 1882, § 3911; Penal Code 1910, § 823; Code 1933, § 59-203; and former O.C.G.A. § 15-12-62 are included in the annotations for this Code section.

Drawing jurors in open court constitutional. — Fact that jurors must be drawn in open court is constitutional, i.e., it does not deprive the petitioner in a habeas corpus hearing of due process or equal protection of the laws. Hill v. Stynchcombe, 225 Ga. 122, 166 S.E.2d 729 (1969) (decided under former Code 1933, § 59-203).

Open court requirement is safeguard. — Requirement that juries must be drawn in open court is a safeguard or guarantee against secret court proceedings; it is a procedure which enables the public to observe the conduct of the judge in drawing juries and thus prevent any possible corruption or suspicion of corruption in this vital part of the jury system. Blevins v. State, 220 Ga. 720, 141 S.E.2d 426 (1965) (decided under former Code 1933, § 59-203).

Compliance with open court requirement essential. — Compliance with the requirement that juries must be drawn in open court is essential to the validity of the criminal prosecution. Blevins v. State, 220 Ga. 720, 141 S.E.2d 426 (1965) (decided under former Code 1933, § 59-203).

Procedures if judge has failed to draw jurors. — Former Code 1933, §§ 59-205 and 59-702, relating to procedures when the judge has failed to draw jurors, does not require the drawing to be "at the close of each term, in open court," contained in the alternative method of drawing jurors provided in former Code 1933, § 59-203. Cobb v. State, 244 Ga. 344, 260 S.E.2d 60 (1979) (decided under former Code 1933, § 59-203).

Provisions not exclusive. — Provisions for selection of jurors at close of each term for service at the ensuing term are not exclusive as indicated by former Code 1933, § 59-713. Harrison v. State, 120 Ga. App. 812, 172 S.E.2d 328 (1969) (decided under former Code 1933, § 59-203).

"Close of term" means at end of regular term and does not include adjourned terms. Hoye v. State, 39 Ga. 718 (1869) (decided under Ga. L. 1869, p. 139, § 2); Finnegan v. State, 57 Ga. 427 (1876) (decided under Code 1873, § 3911).

Number of persons designated by the statute is directory and not mandatory on court. Turner v. State, 78 Ga. 174 (1886) (decided under former Code 1882, § 3911); Evans v. State, 17 Ga. App. 120, 86 S.E. 286 (1915) (decided under former Penal Code 1910, § 823).

Judge not authorized to reject juror for defect propter affectum. — In drawing grand jurors according to this section, the judge is not authorized, upon information based in part on what the judge knows and derived in part from others, to reject jurors so drawn upon the ground that the jurors would be incompetent propter affectum to indict the person against whom a charge is preferred and is to be passed on by the grand jury. Heaton v. State, 167 Ga. 147, 144 S.E. 782 (1928) (decided under former Penal Code 1910, § 823).

Language, "or otherwise disqualified by law," means disqualification which renders it improper to put the name of a person in a grand-jury box and not a disqualification propter affectum. Heaton v. State, 38 Ga. App. 695, 145 S.E. 534

(1928) (decided under former Penal Code 1910, § 823).

Limits on use of plea in abatement. — Defects in drawing of jury cannot be basis of plea in abatement if defendant could have objected before indictment. Tucker v. State, 135 Ga. 79, 68 S.E. 786 (1910) (decided under former Penal Code 1910, § 823); Kirksey v. State, 11 Ga. App. 142, 74 S.E. 902 (1912) (decided under former Penal Code 1910, § 823).

Waiver of challenge. — Challenge to the array of the grand jury should be made before the indictment against the accused is found and returned into court by the grand jury; failure to make a timely objection to the grand jury amounts in law to a waiver of the right to do so. Blevins v. State, 220 Ga. 720, 141 S.E.2d 426 (1965) (decided under former Code 1933, § 59-203).

Presumption of proper selection. — It will be presumed that the grand jury has been properly chosen and names have been available to the defendant in advance. Accordingly, failure to make a timely challenge to the competency of certain grand jurors must be considered as a waiver of any right of challenge. Simpson v. State, 100 Ga. App. 726, 112 S.E.2d 314 (1959) (decided under former Code 1933, § 59-203).

Drawing of jurors more than one month prior to adjournment. — Fact that grand jurors were drawn during term more than one month prior to adjournment of term is not cause for quashing indictment. Haden v. State, 176 Ga. 304, 168 S.E. 272 (1933) (decided under former Code 1933, § 59-203).

Cited in Lynn v. State, 140 Ga. 387, 79 S.E. 29 (1913); Geer v. Bush, 146 Ga. 701, 92 S.E. 47 (1917); Chatterton v. State, 221 Ga. 424, 144 S.E.2d 726 (1965); Hill v. Dutton, 440 F.2d 34 (5th Cir. 1971); Kenerly v. State, 311 Ga. App. 190, 715 S.E.2d 688 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, §§ 8, 19, 21.

C.J.S. — 38A C.J.S., Grand Juries, § 38 et seq.

ALR. — Age group under-representation in grand jury or petit jury venire, 62 ALR4th 859.

15-12-63. Concurrent grand juries.

In any term of court when the public interest requires it, the court, on application of the district attorney, may empanel one or more concurrent grand juries. (Ga. L. 1871-72, p. 47, § 3; Code 1873, § 3936; Code 1882, § 3936; Ga. L. 1884-85, p. 41, § 1; Penal Code 1895, § 862; Penal Code 1910, § 866; Code 1933, § 59-204; Ga. L. 2011, p. 59, § 1-30/HB 415; Ga. L. 2014, p. 862, § 11/HB 1078.)

The 2014 amendment, effective April 29, 2014, substituted the present provisions of this Code section for the former provisions, which read: "When the superior court is held for longer than one week, the presiding judge may direct the clerk to choose separate grand juries for each week."

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Cited in McKibben v. State, 187 Ga. 651, 2 S.E.2d 101 (1939); Foster v. Sparks, 506 F.2d 805 (5th Cir. 1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, §§ 8, 19, 21.

C.J.S. — 38A C.J.S., Grand Juries, § 38 et seq.

15-12-64. Procedure where judge has failed to draw grand jury.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-31/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1869, p. 139, § 3; Code 1873, § 3912; Code 1882, § 3912; Penal Code 1895, § 823; Penal Code 1910, § 826; Code 1933, § 59-205; Ga. L. 2011, p. 59, § 1-31/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-65. Service of summons; time limits.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-32/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1869, p. 139, § 4; Code 1873, § 3913; Code 1882, § 3913; Penal Code 1895, § 824; Penal Code 1910, § 827; Code 1933, § 59-206; Ga. L. 1964, p. 284, § 1; Ga. L. 1976, p. 438, § 8; Ga. L. 1985, p. 149, § 15; Ga. L. 2000, p. 1589, § 6; Ga. L. 2011, p. 59, § 1-32/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-65.1. Mailing of summonses; failure to receive notice.

On and after July 1, 2012, the clerk shall be authorized to mail all summonses by first-class mail addressed to the prospective jurors' most notorious places of abode at least 25 days prior to the date of the court the prospective jurors shall attend. Failure to receive the notice personally shall be a defense to a contempt citation. (Code 1981, § 15-12-65.1, enacted by Ga. L. 2011, p. 59, § 1-33/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Editor's note. — In light of the similarity of the statutory provisions, annotations decided under former Penal Code 1910, § 827; former Code 1933, § 59-206; and former O.C.G.A. § 15-12-65 are included in the annotations for this Code section.

Statutes for selecting, drawing, and summoning jurors form no part of system to procure impartial jury, and

are directory to those whose duty it is to select, draw, and summon persons for jurors. Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931) (decided under former Penal Code 1910, § 827).

Section directory. — Provision of this section with respect to the precept is directory merely, and not mandatory, and a failure of the clerk of the superior court to carry out such provision affords no ground for a challenge to the array of the jurors put upon a defendant in a criminal case. Newham v. State, 35 Ga. App. 391, 133 S.E. 650 (1926) (decided under former Penal Code 1910, § 827).

This section merely requires that precept contain names of persons drawn. Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931) (decided under former Code 1933, § 59-206).

Failure of a juror to receive adequate notice is a defense to any contempt citation brought against that juror. Hunt v. State, 204 Ga. App. 799, 420 S.E.2d 656 (1992) (decided under former Code 1933, § 59-206).

Cited in Culpepper v. United States Fid. & Guar. Co., 199 Ga. 566, 33 S.E.2d 168 (1945) (decided under former Code 1933, § 59-206).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 22. 47 Am. Jur. 2d, Jury, § 122.

C.J.S. — 38A C.J.S., Grand Juries, § 46 et seq.

15-12-66. Preliminary oath to be administered to grand jurors.

(a) Prior to empaneling, swearing, and charging the grand jury, the presiding judge and the district attorney may examine prospective grand jurors as to their qualifications to serve as provided in Code Sections 15-12-4 and 15-12-60. Such examination shall be conducted after the administration of the preliminary oath set forth in subsection (b) of this Code section. Any prospective grand juror who is not qualified to serve shall be excused by the presiding judge.

(b) Prior to examination, the presiding judge, the district attorney, or the clerk shall administer the following oath or affirmation to prospective grand jurors:

> "You shall give true answers to all questions as may be asked by the court or the district attorney concerning your qualifications to serve as a grand juror." (Code 1981, § 15-12-66, enacted by Ga. L. 2014, p. 862, § 12/HB 1078.)

Effective date. — This Code section became effective July 1, 2014.

Editor's notes. — Ga. L. 2011, p. 59, § 1-34/HB 415, repealed former Code Section 15-12-66, relating to tales jurors; drawing and summoning. The former Code section was based on Ga. L. 1869, p. 139, § 8; Code 1873, § 3937; Code 1882, § 3937; Ga. L. 1884-85, p. 63, § 1; Penal Code 1895, § 863; Penal Code 1910, § 867; Code 1933, § 59-207; Ga. L. 1937, p. 466, § 2; Ga. L. 2011, p. 59, § 1-34/HB 415.

RESEARCH REFERENCES

C.J.S. — 38A C.J.S., Grand Juries, § 56.
Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions, § 364.

15-12-66.1. Insufficient number of persons to complete panel of grand jurors.

When from challenge or from any other cause there are not a sufficient number of persons in attendance to complete the empaneling of grand jurors, the presiding judge shall order the clerk to choose at random from the names of persons summoned as trial jurors a sufficient number of prospective grand jurors necessary to complete the grand jury. Nothing in this Code section shall be construed as barring the court from taking any action against a person who has been summoned to appear as a juror as provided in Code Section 15-12-10. (Code 1981, § 15-12-66.1, enacted by Ga. L. 2011, p. 59, § 1-35/HB 415; Ga. L. 2014, p. 862, § 13/HB 1078.)

The 2014 amendment, effective April 29, 2014, substituted the present provisions of this Code section for the former provisions, which read: "On and after July 1, 2012, when from challenge or from any other cause there are not a sufficient number of persons in attendance to complete the panel of jurors, the clerk shall choose prospective trial jurors from the county master jury list and summon the jurors so chosen."

Editor's notes. — Ga. L. 2011, p.59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Editor's note. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 59-207 and O.C.G.A. § 15-12-66 are included in the annotations for this Code section.

Juror having deficiency propter defectum may be rendered specially competent by failure of parties to challenge. Lindsey v. State, 57 Ga. App. 158, 194 S.E. 833 (1938) (decided under former Code 1933, § 59-207).

Selection of jurors whose names were not drawn from jury box. — If the sheriff, without the knowledge and consent of the movants, selected as jurors certain persons whose names were not drawn from the jury box as required, such point cannot be successfully raised for the first time after the verdict. Thomasson v. Hudmon, 185 Ga. 753, 196 S.E. 462 (1938) (decided under former Code 1933, § 59-207).

Cited in Sanders v. State, 151 Ga. App. 590, 260 S.E.2d 504 (1979) (decided under former Code 1933, § 59-207).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 123.
C.J.S. — 50A C.J.S., Juries, § 328.

15-12-67. Appointment or election of foreman; oath of foreman and grand jurors.

(a) The judge of the superior court may appoint the foreman of the grand jury or may direct the grand jury to elect its own foreman. The foreman of the grand jury may administer the oath prescribed by law to all witnesses required to testify before the grand jury and may also examine such witnesses.

(b) The following oath shall be administered to the foreperson and to each member of the grand jury:

"You, as foreperson (or member) of the grand jury for the County of _____, shall diligently inquire and true presentment make of all such matters and things as shall be given you in the court's charge or shall come to your knowledge touching the present service; and you shall keep the deliberations of the grand jury secret unless called upon to give evidence thereof in some court of law in this state. You shall present no one from envy, hatred, or malice, nor shall you leave anyone unpresented from fear, favor, affection, reward, or the hope thereof, but you shall present all things truly and as they come to your knowledge. So help you God." (Laws 1812, Cobb's 1851 Digest, p. 551; Ga. L. 1857, p. 109, § 1; Code 1863, §§ 3827, 3829; Code 1868, §§ 3847, 3850; Code 1873, §§ 3915, 3918; Code 1882, §§ 3915, 3918; Penal Code 1895, §§ 825, 831; Penal Code 1910, §§ 829, 835; Code 1933, §§ 59-208, 59-210; Ga. L. 1994, p. 874, § 1; Ga. L. 1995, p. 1292, § 5.)

History of Code section. — The language of this Code section is derived in part from the decision in Peeples v. State, 178 Ga. 675, 173 S.E. 850 (1934).

JUDICIAL DECISIONS

Discrimination in selection of foreman not due process violation. — Discrimination in the selection of a grand jury foreman can have little, if any, appreciable effect upon a defendant's due process rights to fundamental fairness and therefore provides no basis upon which to reverse a conviction or dismiss an indictment. Ingram v. State, 253 Ga. 622, 323 S.E.2d 801 (1984), cert. denied, 473 U.S. 911, 105 S. Ct. 3538, 87 L. Ed. 2d 661 (1985).

Underrepresentation of certain groups in grand jury foreman position. — Underrepresentation over a period of years of one or more groups in the office of grand jury foreman provided no ground for reversal of a conviction obtained by a properly constituted traverse jury in view of the method by which the jury foreman was selected from the membership of the grand jury. Spivey v. State, 253 Ga. 187, 319 S.E.2d 420 (1984), cert. denied, 469 U.S. 1132, 105 S. Ct. 816, 83 L. Ed. 2d 809 (1985).

Woman as jury foreperson. — In county where by tradition the grand jurors had selected their forepersons, fact that no woman had served as a foreperson of a county grand jury during the preceding ten years did not prove discrimination in selection of grand jurors and forepersons. Moss v. State, 250 Ga. 368, 297 S.E.2d 459 (1982).

Power to administer oath and examine witnesses. — This section does

not confer exclusive or mandatory power upon foreman to administer oath or to examine witnesses. Johnson v. State, 177 Ga. 881, 171 S.E. 699 (1933).

Oath required. — Witnesses testifying before grand jury must be administered an oath, and the grand jury cannot return a true bill except upon the testimony of a witness to whom the statutory oath has been administered. Reaves v. State, 242 Ga. 542, 250 S.E.2d 376 (1978).

When witnesses properly sworn. — If appointment of foreman by the court is lawful, and foreman administered an oath to witnesses, then the witnesses were sworn according to law. Johnson v. State, 177 Ga. 881, 171 S.E. 699 (1933).

Witness need not be sworn by or before open court. Danforth v. State, 75 Ga. 614, 58 Am. R. 480 (1885).

Failure to swear witness waived by joinder of issue. Nixon v. State, 121 Ga. 144, 48 S.E. 966 (1904).

Testimony of district attorney as to swearing witness and oath. — Solicitor general (now district attorney) may be compelled to testify as to how witness sworn and oath administered. Switzer v. State, 7 Ga. App. 7, 65 S.E. 1079 (1909).

Grand jury need not be resworn. — Grand jury properly summoned, sworn, and charged to serve during a particular term of the court may recess and reconvene as the grand jury sees fit to conduct the grand jury's business in the course of that term, and need not be resworn or recharged by the court during that term. State v. Grace, 263 Ga. 220, 430 S.E.2d 583 (1993).

Duty of juror to inform fellow jurors. — It is the duty of a grand juror to bring to the attention of the juror's fellows any matter that has come to the juror's knowledge or which might be given in the charge. Groves v. State, 73 Ga. 205 (1884).

Failure of grand jury to keep secret the grand jury's proceedings does not violate any rights of the defendant; for this provision of the law is not prescribed for the benefit of those who may be accused of a crime, but is for the protection of public morals and to prevent violators of the law from knowing that the violators are being investigated and thus have an opportunity to conceal evidence. Howard v. State, 60 Ga. App. 229, 4 S.E.2d 418 (1939).

Indictment by grand jurors who were sworn by disqualified judge. — Indictment returned by grand jurors who were sworn by a judge who was disqualified to try the case will not be quashed. Cabaniss v. State, 8 Ga. App. 129, 68 S.E. 849 (1910).

Motion to quash indictment properly denied. — Defendant failed to show that the trial court erred in refusing to quash the indictment because when the grand jury bailiff returned the indictment in open court during the regular business hours the grand jury's term had not expired, and the grand jury had not been discharged, but instead, the members of the grand jury had temporarily recessed and would meet again later in the term. Walker v. State, 310 Ga. App. 223, 713 S.E.2d 413 (2011).

Conviction by trial jury rendered harmless any error in charging decision. — Because the defendant did not raise the issue of any grand jury irregularity until after the defendant was convicted at trial by a jury, the trial jury's verdict rendered harmless any conceivable error in the charging decision that might have flowed from the presence of the district attorney or a member of the district attorney's staff during the grand jury's deliberations and voting. Colon v. State, 275 Ga. App. 73, 619 S.E.2d 773 (2005).

Cited in Taylor v. State, 44 Ga. App. 64, 160 S.E. 667 (1931); McDuffie v. Perkerson, 178 Ga. 230, 173 S.E. 151 (1933); Maynard v. Readdick, 128 Ga. App. 368, 196 S.E.2d 688 (1973); Brown v. State, 129 Ga. App. 713, 200 S.E.2d 924 (1973); Creamer v. State, 150 Ga. App. 458, 258 S.E.2d 212 (1979); McClendon v. May, 37 F. Supp. 2d 1371 (S.D. Ga. 1999); Kenerly v. State, 311 Ga. App. 190, 715 S.E.2d 688 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Reasons for secrecy are inapplicable to grand jury's civil duties. — Reasons supporting the policy of grand jury secrecy relate to a grand jury's historic criminal investigatory role, and none of these reasons is relevant to the performance of civil duties by a grand jury. 1980 Op. Att'y Gen. No. U80-44.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, §§ 24, 25. 47 Am. Jur. 2d, Jury, § 191 et seq.

C.J.S. — 38A C.J.S., Grand Juries, §§ 61, 62. 50A C.J.S., Juries, § 517 et seq.

15-12-68. Oath of witnesses.

(a) The following oath shall be administered to all witnesses in criminal cases before the grand jury:

"Do you solemnly swear or affirm that the evidence you shall give the grand jury on this bill of indictment or presentment shall be the truth, the whole truth, and nothing but the truth? So help you God."

(b) Any oath given that substantially complies with the language in this Code section shall subject the witness to the provisions of Code Section 16-10-70. (Cobb's 1851 Digest, p. 836; Code 1863, § 4538; Code 1868, § 4558; Code 1873, § 4652; Code 1882, § 4652; Penal Code 1895, § 834; Penal Code 1910, § 838; Code 1933, § 59-211; Ga. L. 1997, p. 1499, § 1; Ga. L. 2010, p. 862, § 1/SB 313.)

JUDICIAL DECISIONS

Inapplicable to civil investigations. — O.C.G.A. § 15-12-68 is irrelevant to civil investigations conducted pursuant to O.C.G.A. §§ 15-12-71 and/or 15-12-100 et seq. State v. Bartel, 223 Ga. App. 696, 479 S.E.2d 4 (1996).

Witnesses must be sworn. — Witnesses testifying before grand jury must be administered oath, and the grand jury cannot return a true bill except upon the testimony of a witness to whom the statutory oath has been administered. Reaves v. State, 242 Ga. 542, 250 S.E.2d 376 (1978).

Oath not in language of section. — It is not a ground for a new trial that the indictment is void because the oath administered to the witnesses before the grand jury, under whose evidence the indictment was found, was not in the language of this section. Gossitt v. State, 182 Ga. 535, 186 S.E. 417 (1936).

Even if the requisite oath is not administered in accordance with O.C.G.A. § 15-12-68, this does not entitle the defendant to a new trial. Robinson v. State, 221 Ga. App. 865, 473 S.E.2d 519 (1996).

Provisions of this section were met after the witnesses were sworn to give true evidence as to identical persons and matters contained in presentment in which they returned true bill and it is obvious that defendants were to be charged with some of the offenses stated in the original presentment. Beckman v. State, 229 Ga. 327, 190 S.E.2d 906 (1972).

Oath given to a grand jury witness was deficient since the oath did not state whether the state was seeking a bill of indictment or presentment and it did not "state the case" by informing the witness of the offense the accused was supposed to have committed. State v. Williams, 181 Ga. App. 204, 351 S.E.2d 727 (1986);

Inman v. State, 187 Ga. App. 652, 371 S.E.2d 230 (1988).

Cited in Aldridge v. State, 39 Ga. App. 484, 147 S.E. 414 (1929).

OPINIONS OF THE ATTORNEY GENERAL

Perjury. — Witness who appears before a grand jury without knowledge of the name of the accused or the specific offense charged in the bill of indictment and who is not administered the statutory oath is not subject to penalties or perjury for falsely testifying before such grand jury. 1987 Op. Att'y Gen. No. U87-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 55.

C.J.S. — 38A C.J.S., Grand Juries, §§ 56, 57, 58.

ALR. — Failure to swear or irregularity in swearing witnesses appearing before grand jury as ground for dismissal of indictment, 23 ALR4th 154.

15-12-69. Oath of bailiff attending grand jury.

The following oath shall be administered to all bailiffs attending grand juries:

"You do solemnly swear that you will diligently attend the grand jury during the present term and carefully deliver to that body all such bills of indictment or other things as shall be sent to them by the court without alteration, and as carefully return all such as shall be sent by that body to the court. So help you God."

(Laws 1831, Cobb's 1851 Digest, pp. 553-554; Code 1863, § 5105; Code 1868, § 3848; Code 1873, § 3916; Code 1882, § 3916; Penal Code 1895, § 828; Penal Code 1910, § 832; Code 1933, § 59-209.)

Cross references. — Selection of bailiffs by sheriff, § 15-6-35.

JUDICIAL DECISIONS

Bailiff may be sworn in open court or before grand jury and there is no duty to enter the fact on the minutes of the court. If there is such an entry, a presumption arises that the person named was qualified to act. Zeigler v. State, 2 Ga. App. 632, 58 S.E. 1066 (1907).

Return of indictment to court by bailiff valid. — Danforth v. State, 75 Ga. 614, 58 Am. R. 480 (1885); Sampson v. State, 124 Ga. 776, 53 S.E. 332, 4 Ann. Cas. 525 (1906).

Substitution of bailiff for grand jury members authorized. — Bailiff is sworn to diligently attend the grand jury, and carefully deliver to the grand jury all bills of indictment or other things sent to them by the court, without alteration, and "as carefully return all such as shall be sent by that body to the court." The quoted portion of the bailiff's oath authorized a substitution of the bailiff for the members of the grand jury in the performance of the act of returning into court an indictment which has been duly found by the grand jury. Zugar v. State, 194 Ga. 285, 21 S.E.2d 647 (1942).

Return of grand jury indictment charging murder. — If a plea in abatement alleges that the indictment was not so returned, that the grand jury bailiff to whom such indictment was delivered by

the jury found the judge of the court in the corridor or hallway of the courthouse on the floor below the courtroom, and at the direction of the judge delivered the indictment to the clerk in the clerk's office, this shows that the indictment was not returned in open court as required by law. Zugar v. State, 194 Ga. 285, 21 S.E.2d 647 (1942).

Cited in Taylor v. State, 44 Ga. App. 64, 160 S.E. 667 (1931); Cadle v. State, 101 Ga. App. 175, 113 S.E.2d 180 (1960); Henderson v. State, 182 Ga. App. 513, 356 S.E.2d 241 (1987).

15-12-70. Disqualification for relationship to interested party.

All grand jurors in the courts of this state shall be disqualified to act or serve in any case or matter when such jurors are related by consanguinity or affinity to any party interested in the result of the case or matter within the sixth degree as computed according to the civil law. Relationship more remote shall not be a disqualification. (Ga. L. 1935, p. 396, § 1.)

JUDICIAL DECISIONS

Code section defines qualification of grand jurors respecting their duty to investigate and make presentments or return indictments for commission of penal offenses. Hobbs v. Peavy, 210 Ga. 671, 82 S.E.2d 224 (1954).

Section does not seek to change law on subject of disqualification of grand jurors otherwise than to reduce degree of relationship which disqualifies grand juror from the ninth to the sixth degree; the statute does not purport to say how such disqualification shall be raised, nor does the statute indicate the result if one so disqualified actually serves. Farrar v. State, 187 Ga. 401, 200 S.E. 803 (1939).

Grand juror related within prohibited degree. — Even if a grand juror was related within the prohibited degree to the party interested in the indictment and should be disqualified, a plea in abatement did not lie given that the grand jury was an accusatory or prosecutorial body. Brown v. State, 295 Ga. 240, 759 S.E.2d 489 (2014).

Relationship of grand juror within sixth degree to party interested in indictment affords no ground for plea in abatement to indictment; and this rule is not changed by this section. Farrar v. State, 187 Ga. 401, 200 S.E. 803 (1939); Williams v. State, 107 Ga. App. 794, 131 S.E.2d 567 (1963); Phillips v. State, 167 Ga. App. 260, 305 S.E.2d 918 (1983); Black v. State, 264 Ga. 550, 448 S.E.2d 357 (1994), cert. denied, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 223 (1995).

Hearsay evidence admissible to prove pedigree and relationship if confined to general knowledge. Wynn v. State, 181 Ga. 660, 183 S.E. 923 (1935).

Time for raising issue of disqualification. — Issue of disqualification of a juror should be raised prior to indictment or at the earliest practical opportunity thereafter. Sowers v. State, 194 Ga. App. 205, 390 S.E.2d 110 (1990).

Although a defendant's estranged spouse was on the grand jury that indicted the defendant, disqualification of the spouse as a juror did not afford grounds for the dismissal of the charge or the grant of a new trial, even though the parties were ignorant of the defect until after the verdict. The issue of disqualification of a juror should have been raised prior to indictment or at the earliest practical opportunity thereafter. Decoteau v. State, 302 Ga. App. 451, 691 S.E.2d 328 (2010).

Disqualification not ground for dismissal of charge or new trial. — Disqualification of a grand juror propter affectum, that is, for bias or prejudice, does not afford grounds for the dismissal of the charge or the grant of a new trial even though the parties were ignorant of the defect until after the verdict. Sowers v. State, 194 Ga. App. 205, 390 S.E.2d 110 (1990).

District attorney was not a party interested in the result of the case or matter. — Since appellant's motion to quash appellant's indictment was predicated upon the disqualification of a grand juror who was the district attorney's aunt and had served on the grand jury that returned the indictment against appellant, and the trial court denied the motion to quash but certified the court's order for immediate review, the district attorney was not a "party interested in the result of the case or matter" so as to disqualify the aunt from serving as a grand juror pursuant to O.C.G.A. § 15-12-70. Bolds v. State, 195 Ga. App. 586, 394 S.E.2d 593 (1990).

Ineffective assistance of counsel not found. — Defense counsel did not provide ineffective assistance of counsel in failing to conduct a proper pretrial investigation as defendant failed to show that a grand juror was not qualified because the grand juror was a convicted felon; further, even if a grand juror was the father of a prosecution witness, defendant failed to show prejudice as the disqualification of a grand juror under O.C.G.A. § 15-12-70 was not a viable ground for quashing an indictment. Stevenson v. State, 272 Ga. App. 335, 612 S.E.2d 521 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 11.

C.J.S. — 38A C.J.S., Grand Juries, §§ 11, 22 et seq.

ALR. — Right to introduce extrinsic evidence in support of challenge to juror for cause, 65 ALR 1056.

Challenge of proposed juror for implied bias or interest because of relationship to one who would be subject to challenge for that reason, 86 ALR 118.

15-12-71. Duties of grand jury.

(a) The duties of a grand jury shall be confined to such matters and things as it is required to perform by the Constitution and laws or by order of any superior court judge of the superior court of the county.

(b)(1) The grand jury shall at least once in each calendar year inspect the condition and operations of the county jail. The grand jury shall at least once in every three calendar years inspect and examine the offices and operations of the clerk of superior court, the judge of the probate court, and the county treasurer or county depository. If the office of the district attorney is located in the county in which the grand jury is impaneled, the grand jury shall inspect and examine the offices of the district attorney at least once in every three calendar years. If the offices of the district attorney are located in a county other than the county in which the grand jury is impaneled, the grand jury may inspect the offices of the district attorney as the grand jury deems necessary or desirable.

(2) In addition to the inspections provided for in paragraph (1) of this subsection, the grand jury shall, whenever deemed necessary by eight or more of its members, appoint a committee of its members to inspect or investigate any county office or county public building or any public authority of the county or the office of any county officer,

any court or court official of the county, the county board of education, or the county school superintendent or any of the records, accounts, property, or operations of any of the foregoing.

(3) The grand jury may prepare reports or issue presentments based upon its inspections as provided for in this subsection, and any such presentments shall be subject to publication as provided for in Code Section 15-12-80.

(4) The grand jury may appoint one citizen of the county to provide technical expertise to the grand jury in connection with inspections provided for in this Code section. Such citizen shall be compensated at the same rate that a grand juror is compensated.

(c) Any grand jury or any committee thereof which has undertaken to conduct an inspection or investigation as provided in subsection (b) of this Code section shall have the right to examine any papers, books, records, and accounts, to compel the attendance of witnesses, and to hear evidence. If any public officer, agent, or employee refuses to produce any such papers, books, records, and accounts, any superior court judge of the superior court of the county, upon evidence being adduced, may enforce this Code section by mandamus or attachment as the case may require. If any public officer, agent, or employee fails or refuses to exhibit to the grand jury or its committee the funds on hand or claimed by them to be on hand upon presentation of that fact to any superior court judge of the superior court the judge may by mandamus or attachment compel the delivery of the funds to the grand jury or the committee for the purpose of counting.

(d) The judge charging the grand jury shall inform the grand jury of the provisions of subsections (b) and (c) of this Code section. (Ga. L. 1869, p. 139, § 5; Code 1873, § 3914; Code 1882, § 3914; Penal Code 1895, § 829; Penal Code 1910, § 833; Code 1933, § 59-301; Ga. L. 1986, p. 306, § 1; Ga. L. 1994, p. 607, § 4; Ga. L. 1995, p. 1292, § 6.)

Cross references. — Employment by county of accountant to examine books, § 36-1-10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, "it is" was substituted for "they are" in subsection (a).

Pursuant to Code Section 28-9-5, in 1995, "impaneled" was substituted for "empaneled" in two places in paragraph (b)(1).

Law reviews. — For annual survey on criminal law, see 64 Mercer L. Rev. 83 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Penal Code 1895, §§ 841, 842, and 843 and former Code 1933, § 59-309 and former O.C.G.A. § 15-12-75, relating to inspection of offices and records of certain county employees by grand jury, former Code 1933, § 59-310 and former O.C.G.A. § 15-12-76, relating to appointment of citizen or citizen committee to examine offices and records of certain county officials, are included in the annotations for this Code section.

Extent of powers granted. — Grand juries may appoint a committee of citizens to inspect and examine, during vacation, the official records, accounts, etc., of all county officers, and to make a full and complete report of their findings to the grand jury at the succeeding term. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646 (1936) (decided under former Code 1933, § 3920).

County departments of family and children services were state rather than county offices for purposes of O.C.G.A. § 15-12-71 and, as state offices, were not subject to a grand jury's power of inspection and investigation. Floyd County Grand Jury v. Department of Family & Children Servs., 218 Ga. App. 832, 463 S.E.2d 519 (1995).

Appointment of accountant to examine county books does not take power from grand jury. — Former Ga. Civ. Code 1910, § 410 (see now O.C.G.A. § 36-1-10) did not take away from the grand jury the grand jury's power to investigate, inspect, and examine the books and records of county officers, or, if the grand jury deems it necessary, to appoint one or more citizens of the county to do so. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646 (1936).

Oath requirement inapplicable to civil investigations. — O.C.G.A. § 15-12-68 is irrelevant to civil investigations conducted pursuant to O.C.G.A. § 15-12-71 and/or O.C.G.A. § 15-12-100 et seq. State v. Bartel, 223 Ga. App. 696, 479 S.E.2d 4 (1996).

No particular oath is required for witnesses in civil investigations; thus, it was error to dismiss a perjury indictment on the basis of a deficient oath since the oath administered named the grand jury, specified the type of investigation, named the subject entities being investigated, and contained accepted language regarding the promise and obligation to testify truthfully. State v. Bartel, 223 Ga. App. 696, 479 S.E.2d 4 (1996).

Impact of special grand jury's overreach. — Although the defendant established a violation of the impaneling order, which fixed the scope of the special purpose grand jury's investigative powers to county corruption, but not city, and it also constituted a violation of O.C.G.A. §§ 15-12-71 and 15-12-102, neither dismissal of the indictment nor suppression of the evidence was the proper remedy for the grand jury's overreach as no violation of the defendant's constitutional rights nor a structural defect in the grand jury process occurred. State v. Lampl, 296 Ga. 892, 770 S.E.2d 629 (2015).

Cited in Gibson v. State, 162 Ga. 504, 134 S.E. 326 (1926); Thompson v. Macon-Bibb County Hosp. Auth., 154 Ga. App. 766, 270 S.E.2d 46 (1980); In re Gwinnett County Grand Jury, 284 Ga. 510, 668 S.E.2d 682 (2008); Kenerly v. State, 311 Ga. App. 190, 715 S.E.2d 688 (2011).

Inspections

It is the duty of the grand jury to examine the books, records, and financial condition of the county. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646 (1936) (decided under former Penal Code 1895, § 841).

Hospitals operated by authorities are subject to examination by grand juries as county facilities. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Reports

If reports contain statements unnecessary to purpose of report, those reports exceed powers of grand jury. Thompson v. Macon-Bibb County Hosp. Auth., 246 Ga. 777, 273 S.E.2d 19 (1980).

Trial court properly expunged a grand jury presentment of statements unneces-

Reports (Cont'd)

sary to the purpose sought to be accomplished by the report that cast reflections of misconduct in office upon a public officer and impugned the officer's character; the remainder of the report was properly filed and published as the grand jury report was in the nature of a general presentment in which the grand jury took note of alleged excessive overtime for county employees, which was within the province of the grand jury, and its limited remaining criticisms came within the ambit of O.C.G.A. §§ 15-12-71(b) and (c), and 15-12-80 as they did not appear to be criticisms of misconduct in office or impugned character. In re July-August, 2003 DeKalb County Grand Jury, 265 Ga. App. 870, 595 S.E.2d 674 (2004).

Reports of civil investigations. — Grand jury in exercising investigative powers of civil nature may make fair reports of the grand jury's findings, even though such reports of necessity incidentally reflect negligence or incompetence, upon the officials involved. Kelley v. Tanksley, 105 Ga. App. 65, 123 S.E.2d 462 (1961).

Report charging misconduct in office. — Grand jury has no right to file a report charging misconduct in office upon an officer or impugning an officer's character, except by presentment or true bill of indictment charging such individual with a specific offense. Kelley v. Tanksley, 105 Ga. App. 65, 123 S.E.2d 462 (1961).

Report of misconduct in office. — Grand jury has no right to file a report charging misconduct in office upon a public officer except by presentment or true bill of indictment charging such individual with a specific offense; and it is the fundamental right of one who is the subject of such an extrajudicial report to have it expunged from the official records. Thompson v. Macon-Bibb County Hosp. Auth., 154 Ga. App. 766, 270 S.E.2d 46, aff'd, 246 Ga. 777, 273 S.E.2d 19 (1980).

Publication of committee report. — Grand jury's adoption of a report of a citizens' committee appointed by a superior court to investigate the sheriff's office was not a special presentment or true bill of indictment charging any individual with the violation of the state penal laws, and, therefore, the grand jury exceeded the grand jury's authority in publishing the report. In re Hensley, 184 Ga. App. 625, 362 S.E.2d 432 (1987) (decided under former O.C.G.A. § 15-12-76).

Failure to expunge. — Trial court erred in failing to expunge from grand jury presentments an entire report entitled "Attorney General's Investigation" which contained allegations which not only were critical of the Attorney General, but also cast reflections of misconduct and impugned the character of the Attorney General and that office. In re Floyd County Grand Jury Presentments for May Term 1996, 225 Ga. App. 705, 484 S.E.2d 769 (1997).

Other

Recommending code of ethics. — If a grand jury committee was authorized to investigate the coroner's office, and their report referred only to "establishment of a code of ethics for elected county officials," which refers generally to all county officials and not to any one person or office, the trial court did not err in refusing to expunge this grand jury recommendation. In re Gwinnett County Grand Jury Proceedings, 180 Ga. App. 241, 348 S.E.2d 757 (1986).

Compensation for services authorized. — Former Ga. Penal Code 1895, §§ 841, 842, and 843 contemplated services by resident individuals composing committees appointed by grand juries, and compensation for such services and, considered in connection with former Ga. Civ. Code 1910, § 4872 (see now O.C.G.A. § 15-6-24), authorized payment by the county of compensation for such services of the committee by order of the court as a part of the expenses of the court. Watkins v. Tift, 177 Ga. 640, 170 S.E. 918 (1933).

Individual who investigates the books and records of county officials while serving on a citizens committee is entitled to compensation for the individual's services. Richter v. Thomas County Comm'n, 152 Ga. App. 332, 262 S.E.2d 604 (1979) (decided under former Code 1933, § 59-310).

Compensation fixed by judge. — Judge of superior court is to fix amount of

compensation. Chatham County v. Gaudry, 120 Ga. 121, 47 S.E. 634 (1904).

Whenever a committee appointed by the grand jury shall have performed the services required, its members shall be entitled to receive, as a part of the court expenses, fair and reasonable compensation for their services to be fixed and determined by the judge of the superior court. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646 (1936).

Lawyer may not be compensated for legal services as member of grand jury committee. Daniel v. Yow, 226 Ga. 544, 176 S.E.2d 67 (1970).

Employment of attorneys. — Grand jury and its committees are without authority to employ attorneys to furnish legal services at county's expense, but must rely upon the district attorney for such services. Daniel v. Yow, 226 Ga. 544, 176 S.E.2d 67 (1970).

Employment of expert accountants. — This section does not confer power upon grand jury or court to employ expert accountants whose compensation is to be paid out of county treasury to render services under direction of the committee in performing the duties imposed upon that body. Watkins v. Tift, 177 Ga. 640, 170 S.E. 918 (1933).

This section is valid but does not authorize the appointment of expert accountants by the county commissioners or ordinary (now probate judge) to examine the books and accounts of county officers. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646 (1936).

Plan to use compensation for clerical expenses does not work revocation. — When the members of a duly appointed committee, having performed the services required, are themselves entitled to compensation therefor, the order fixing and allowing the members compensation should not be revoked and set aside because it appears that the members of the committee have admitted that upon receipt of such compensation the members intend to use the compensation to defray certain expenses incurred by the members in performing their duties in hiring stenographers and other clerical aid, as what the committee members intend to do with the compensation is no concern of the county, and its liability to them for their services would be discharged on payment of compensation due. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646 (1936) (decided under former Ga. Civ. Code 1910, §§ 840 and 841).

Compensation for services performed can be paid as part of contingent expenses of court. Richter v. Thomas County Comm'n, 152 Ga. App. 332, 262 S.E.2d 604 (1979) (decided under former Code 1933, § 59-310).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions rendered under former Code 1933, § 59-309 and former O.C.G.A. § 15-12-75, relating to inspection of offices and records of certain county employees by grand jury, and former Code 1933, § 59-310 and former O.C.G.A. § 15-12-76, relating to appointment of citizen or citizen committee to examine offices and records of certain county officials, are included in the annotations for this Code section.

Deference to common law. — Use of general language in O.C.G.A. § 15-12-71 and in the original codification of grand jury law in Georgia, Ga. Laws 1869, § 5, is indicative of a legislative deference to the common law for grand jury supervision. 1987 Op. Att'y Gen. No. U87-20.

Reconvening of grand jury. — Unless it has been formally discharged by court order, a grand jury may recess and reconvene as the grand jury sees fit. 1996 Op. Att'y Gen. No. U96-15.

Appointment of committee to observe county affairs. — Grand jury has authority to appoint committee for purpose of observation of county affairs if such observation is limited to the duties prescribed in this section; a grand jury may recommend compensation for the committee members, but a judge of the superior court must determine and ap-

prove the compensation. 1977 Op. Att'y Gen. No. U77-36 (decided under former Code 1933, § 59-310).

Grand jury may appoint citizen committee to report upon conditions in county funded public assistance programs, but neither a grand jury nor a superior court judge is authorized to employ a fraud investigator. 1975 Op. Att'y Gen. No. U75-70 (decided under former Code 1933, § 59-310).

Members of a previous grand jury may be appointed as a citizens committee by the current grand jury in order to investigate matters which are county affairs, such as problems at a regional hospital, so long as county officers or county funds are involved in the operation of the hospital. 1989 Op. Att'y Gen. No. U89-10 (decided under former O.C.G.A. § 15-12-76).

Private books of office holders. — Inspection and examination specified in this section is limited to the official records and documents of the enumerated offices, and does not extend to the private and personal books of the persons who happen to be occupying these individual offices. 1963-65 Op. Att'y Gen. p. 361 (decided under former Code 1933, § 59-309).

Advice on selection of police. — County commissioners may use a grand jury to advise the commissioners on selection of police but may not delegate the commissioners' authority to appoint police to the grand jury. 1960-61 Op. Att'y Gen. p. 79 (decided under former law).

Indictment prerequisite to compelling witnesses. — When no indictment has been formally prepared for consideration by the grand jury, the grand jury has no power to compel attendance of witnesses. 1987 Op. Att'y Gen. No. U87-20.

Name and offense prerequisite to investigation. — When a district attorney cannot provide the grand jury either the name of the accused or the specific offense to be charged, the grand jury has no authority to conduct an investigation. 1987 Op. Att'y Gen. No. U87-20.

Investigating operation of city water system. — County grand jury lacked the authority to inspect city records and investigate the operation of the city water system since the grand jury had no authority to conduct investigations of city matters when the grand jury was not considering an indictment for criminal violations. 1988 Op. Att'y Gen. No. U88-2.

Investigation of county offices. — Grand jury may investigate the operation of county offices by reasonably observing county officials in the performance of the officials' duties, but the grand jury may not conduct a generalized investigation into possible criminal conduct of public officials absent a proposed indictment or presentment. 1996 Op. Att'y Gen. No. U96-15.

Independent school systems. — Grand jury has the authority to investigate independent school systems. 1983 Op. Att'y Gen. No. U83-23 (decided under former O.C.G.A. § 15-12-76).

Subpoena of state or city records. — Grand jury's civil investigative authority is limited to county matters. Only in the investigation of a possible criminal violation for the purpose of considering an indictment would a grand jury have authority to subpoena state or city records. 1985 Op. Att'y Gen. No. U85-28.

Grand juries do not have the power to subpoena duty records of the state patrol or city police to determine the accuracy of disbursement of witness fees by the clerk's office. 1985 Op. Att'y Gen. No. U85-28.

City police department. — There is no authority which would allow a grand jury to investigate or make general presentments concerning a city police department, whether the grand jury is acting on the grand jury's own or through a committee appointed by the grand jury from members of a previous grand jury. 1985 Op. Att'y Gen. No. U85-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, §§ 2, 3, 33, 34.

C.J.S. — 38A C.J.S., Grand Juries, § 88 et seq.

ALR. — Matters within investigating powers of grand jury, 22 ALR 1356; 106 ALR 1383; 120 ALR 437.

Validity and construction of statute au-

thorizing grand jury to submit report concerning public servant's noncriminal misconduct, 63 ALR3d 586.

Individual's right to present complaint or evidence of criminal offense to grand jury, 24 ALR4th 316.

15-12-72. Disclosures of grand jurors in court.

Grand jurors shall disclose everything which occurs in their service whenever it becomes necessary in any court of record in this state. (Laws 1812, Cobb's 1851 Digest, p. 277; Code 1863, § 3722; Code 1868, § 3746; Code 1873, § 3799; Code 1882, § 3799; Civil Code 1895, § 5200; Penal Code 1895, § 827; Civil Code 1910, § 5787; Penal Code 1910, § 831; Code 1933, § 59-302.)

JUDICIAL DECISIONS

Disclosure must be necessary. — Although O.C.G.A. § 15-12-72 apparently makes an exception to O.C.G.A. § 15-12-73 by providing that grand jurors shall disclose everything which occurs in their service whenever it becomes necessary in any court of record in Georgia since the trial court apparently did not find such disclosure was necessary to resolve the issue before it, the trial court did not err by sustaining the state's objection to questions as to what transpired while the grand jury was in session. Womble v. State, 183 Ga. App. 727, 360 S.E.2d 271 (1987).

Grand jurors not incompetent as witnesses when duly called. Fite v. Bennett, 142 Ga. 660, 83 S.E. 515 (1914).

Grand jurors cannot be sworn to impeach their own finding. Simms v. State, 60 Ga. 145 (1878).

Grand jurors cannot be sworn and examined as witnesses to impeach their findings. Womble v. State, 183 Ga. App. 727, 360 S.E.2d 271 (1987).

Minutes of proceedings. — Law does not require grand jury to keep minutes of the grand jury's proceedings. Thompson v. State, 18 Ga. App. 488, 89 S.E. 607 (1916).

Cited in Wood v. Georgia, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962); Kennedy v. State, 205 Ga. App. 152, 421 S.E.2d 560 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 56.

C.J.S. — 38A C.J.S., Grand Juries, § 206 et seq.

ALR. — Duty of secrecy on part of members of, or witnesses or other persons present before, grand jury, 127 ALR 272.

Accused's right to inspection of minutes of state grand jury, 20 ALR3d 7.

Discovery, in civil proceeding, of records of criminal investigation by state grand jury, 69 ALR4th 298.

15-12-73. Exclusion of admissions and communications among grand jurors.

Admissions and communications among grand jurors are excluded as evidence on grounds of public policy. (Orig. Code 1863, § 3720; Code 1868, § 3744; Code 1873, § 3797; Code 1882, § 3797; Penal Code 1895, § 826; Penal Code 1910, § 830; Code 1933, § 59-303.)

JUDICIAL DECISIONS

Disclosure when necessary in court. — Although O.C.G.A. § 15-12-72 apparently makes an exception to O.C.G.A. § 15-12-73 by providing that grand jurors shall disclose everything which occurs in their service whenever it becomes necessary in any court of record in Georgia since the trial court apparently did not find such disclosure was necessary to resolve the issue before the grand jury, the trial court did not err by sustaining the state's objection to questions as to what transpired while the grand jury was in session. Womble v. State, 183 Ga. App. 727, 360 S.E.2d 271 (1987).

RESEARCH REFERENCES

ALR. — Discovery, in civil proceeding, of records of criminal investigation by state grand jury, 69 ALR4th 298.

15-12-74. Grand jury presentment of offenses.

Grand jurors have a duty to examine or make presentments of such offenses as may or shall come to their knowledge or observation after they have been sworn. Additionally, they have the right and power and it is their duty as jurors to make presentments of any violations of the laws which they may know to have been committed at any previous time which are not barred by the statute of limitations. (Laws 1829, Cobb's 1851 Digest, p. 553; Code 1863, § 3828; Code 1868, § 3849; Code 1873, § 3917; Code 1882, § 4709; Penal Code 1895, § 830; Penal Code 1910, § 834; Code 1933, § 59-304.)

Cross references. — Immunity of grand jurors from action for malicious prosecution, § 51-7-46.

Law reviews. — For article discussing the grand jury's ability to indict the accused contrary to the findings of the preliminary hearing, see 13 Ga. St. B.J. 195 (1977).

JUDICIAL DECISIONS

Grand jury not bound by charge or presentment. — Grand jury is not bound by the charge stated in order of the magistrate binding the defendant over, nor is the grand jury bound by presentment of district attorney but must make a separate determination as to what offenses have been committed. Johnson v. State, 242 Ga. 822, 251 S.E.2d 563 (1979).

Initiatory investigation restricted. — Grand jury cannot subpoena a witness to testify as to the witness's general knowledge of violations of the penal laws when that body knows nothing of any fact or person connected with the offense. In re Lester, 77 Ga. 143 (1886).

Matter before grand jury sufficient for investigatory subpoena. — Case against a certain individual whose correct name was unknown to the grand jury, and who was identified in the indictment as "Carlos (Last Name Unknown)," constituted a sufficient matter before the grand jury and authorized a subpoena for a reporter's testimony regarding the case. Vaughn v. State, 259 Ga. 325, 381 S.E.2d 30 (1989).

When presentment may be returned on unconnected offense. — Special presentment may be returned if it appears from the testimony of a witness that an offense unconnected from the case

under consideration has been committed. Oglesby v. State, 121 Ga. 602, 49 S.E. 706 (1905).

Authority of grand juror to impart knowledge of crime to other jurors. — If grand jurors know of a crime, it is not in a legal sense unknown. The knowledge of one grand juror is the knowledge of the other grand jurors. Grand jurors in session should and do impart their knowledge of crimes to their associate grand jurors. The fact that a grand juror had promised not to disclose the juror's knowledge of the crime in no way relieved the juror from the duty imposed upon the jury by law to disclose it. Taylor v. State, 44 Ga. App. 64, 160 S.E. 667 (1931), cert. dismissed, 175 Ga. 642, 165 S.E. 733 (1932), overruled on other grounds, State v. Tyson, 544 S.E.2d 444 (Ga. 2001).

Writ of prohibition will not lie to prevent grand jury from doing its duty. Stynchcombe v. Hardy, 228 Ga. 130, 184 S.E.2d 356 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 36.

C.J.S. — 38A C.J.S., Grand Juries, § 88 et seq.

ALR. — Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct, 63 ALR3d 586.

15-12-75. Inspection of offices and records of certain county officials by grand jury.

Reserved. Repealed by Ga. L. 1994, p. 607, § 5, effective July 1, 1994.

Editor's notes. — This Code section was based on Laws 1829, Cobb's 1851 Digest, p. 195; Code 1863, § 3831; Code 1868, § 3852; Code 1873, § 3920; Ga. L. 1877, p. 116, § 1; Code 1882, §§ 3920, 1263a; Penal Code 1895, § 836; Ga. L. 1901, p. 57, § 1; Ga. L. 1905, p. 107, § 2; Penal Code 1910, § 840; Code 1933, § 59-309.

15-12-76. Appointment of citizen or citizen committee to examine offices and records of certain county officials; powers of those appointed; enforcement of inspection.

Reserved. Repealed by Ga. L. 1994, p. 607, § 6, effective July 1, 1994.

Editor's notes. — This Code section was based on Ga. L. 1872, p. 45, §§ 1-3; Code 1873, §§ 3921, 3922, 3923; Code 1882, §§ 3921, 3922, 3923; Ga. L. 1890-91, p. 79, § 1; Penal Code 1895, §§ 837, 838, 839; Ga. L. 1901, p. 57, § 1; Ga. L. 1905, p. 107, § 2; Penal Code 1910, §§ 841-843; Code 1933, §§ 59-310, 59-311, 59-312.

15-12-77. Investigation and presentment of interference with court order or sentence; transmittal of presentment to Governor; penalty for failure of officer to make report.

Reserved. Repealed by Ga. L. 1988, p. 549, § 1, effective March 30, 1988.

Editor's notes. — This Code section was based on Ga. L. 1895, p. 69, § 2; Penal Code 1895, § 844; Penal Code 1910, §§ 848, 849; Code 1933, §§ 24-2817, 59-313; and Ga. L. 1981, Ex. Sess., p. 8.

15-12-78. Inspection of county jails; recommendations and presentments.

Grand juries shall carefully inspect the sanitary condition of the jails of their respective counties at each regular inspection provided for in Code Section 15-12-71 and in their general presentments shall make such recommendations to the county governing authorities as may be necessary to provide for the proper heating and ventilation of the jails, which recommendations the county governing authorities shall strictly enforce. The grand juries shall also make such presentments as to the general sanitary condition of the jails and the treatment of the inmates as the facts may justify. (Ga. L. 1887, p. 102, § 1; Penal Code 1895, § 840; Penal Code 1910, § 844; Code 1933, § 59-314; Ga. L. 1982, p. 3, § 15; Ga. L. 1984, p. 22, § 15; Ga. L. 1994, p. 607, § 7.)

Cross references. — Frequency with which grand jury must perform duties, § 15-12-71. Further provisions regarding sanitation and health requirements and inspections relating to jails, § 42-4-32.

Law reviews. — For article, "Georgia Local Government Officials and the Grand Jury," see 26 Ga. St. B.J. 50 (1989).

JUDICIAL DECISIONS

Cited in Foster v. Sparks, 506 F.2d 805 (5th Cir. 1975); City of Kennesaw v. Ravan, 245 Ga. 226, 264 S.E.2d 200 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 35.

C.J.S. — 38A C.J.S., Grand Juries, § 98.

ALR. — Discretion of trial court in criminal case as to permitting or denying view of premises where crime was committed, 124 ALR 841.

15-12-79. Inspection of public buildings, property, and records; report.

Reserved. Repealed by Ga. L. 1994, p. 607, § 8, effective July 1, 1994.

Editor's notes. — This Code section was based on Orig. Code 1863, § 476; Code 1868, § 538; Code 1873, § 504; Code 1882, § 504; Penal Code 1895, § 841; Penal Code 1910, § 845; Code 1933, § 59-315; Ga. L. 1955, p. 151, § 1; Ga. L. 1985, p. 1053, § 1.

15-12-80. Publication of general presentments.

Grand juries are authorized to recommend to the court the publication of the whole or any part of their general presentments and to

prescribe the manner of publication. When the recommendation is made, the judge shall order the publication as recommended. Reasonable charges therefor shall be paid out of the county treasury, upon the certificate of the judge, as other court expenses are paid. (Ga. L. 1889, p. 156, § 1; Penal Code 1895, § 847; Penal Code 1910, § 851; Code 1933, § 59-317.)

JUDICIAL DECISIONS

Grand jury's presentment may be published and treated as indictment. — Though in absence of specific statutory authority the grand jury had no right to return a report charging or casting reflections of misconduct in office upon public officials or impugning their character, except by presentment or indictment, the grand jury's presentment may be widely published under former Code 1933, § 59-317 (see now O.C.G.A. § 15-12-80), and was treated as an indictment by former Code 1933, § 27-703 (see now O.C.G.A. § 17-7-51). Sweeney v. Balkcom, 358 F.2d 415 (5th Cir. 1966).

Secrecy. — Under O.C.G.A. § 45-11-4(g), a public officer accused of unprofessional conduct had the right to appear before the grand jury to make a sworn statement as desired at the conclusion of the presentation of the state's evidence; however, a public official who was the topic of a critical grand jury presentment did not have any right to maintain the secrecy of the document under circumstances in which, contrary to the provisions of O.C.G.A. § 15-12-80, the grand jury caused the premature release of its presentments by giving them to the county attorney before presenting them to the superior court for publication. Decatur County v. Bainbridge Post Searchlight, Inc., 280 Ga. 706, 632 S.E.2d 113 (2006).

Remainder of grand jury report properly published. — Trial court properly expunged a grand jury presentment of statements unnecessary to the purpose sought to be accomplished by the report that cast reflections of misconduct in office upon a public officer and impugned the officer's character; the remainder of the report was properly filed and published as the grand jury report was in the nature of a general presentment in which the grand jury took note of alleged excessive overtime for county employees, which was within the province of the grand jury, and its limited remaining criticisms came within the ambit of O.C.G.A. §§ 15-12-71(b) and (c) and 15-12-80 as they did not appear to be criticisms of misconduct in office or impugned character. In re July-August, 2003 DeKalb County Grand Jury, 265 Ga. App. 870, 595 S.E.2d 674 (2004).

Cited in In re Gwinnett County Grand Jury, 284 Ga. 510, 668 S.E.2d 682 (2008).

RESEARCH REFERENCES

C.J.S. — 38A C.J.S., Grand Juries, § 100 et seq.

15-12-81. Notice of upcoming appointment by grand jury.

(a) Whenever it is provided by law that the grand jury of any county shall elect, select, or appoint any person to any office, notice thereof shall be given in the manner provided in subsection (b) of this Code section.

(b) It shall be the duty of any board, authority, or entity whose members are elected, selected, or appointed by the grand jury of a

county to notify the clerk of superior court in writing, at least 90 days prior to an upcoming election, selection, or appointment by the grand jury, that the grand jury shall elect, select, or appoint a person to the office held by such member at the time of notice; except where a vacancy has been created by death, resignation, or removal from office, in which case notice shall be given within ten days of the creation of the vacancy. It shall be the duty of the clerk of superior court, upon receiving notice of the upcoming appointment, to publish in the official organ of the county a notice that certain officers are to be elected, selected, or appointed by the grand jury of the county. The publication shall be once a week for two weeks during a period not sooner than 60 days prior to the election, selection, or appointment, except, where a vacancy has been created by death, resignation, or removal, notice shall be published once a week for two weeks during a period not sooner than ten days prior to the election, selection, or appointment. The cost of advertisement shall be paid from the funds of the county. It shall be the duty of the governing authority of the county to pay the cost promptly upon receiving a bill for the advertisement. (Ga. L. 1958, p. 686, §§ 1, 2; Ga. L. 1959, p. 424, §§ 1, 2; Ga. L. 1989, p. 310, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, "ten" was substituted for "10" and a comma was added after "resignation" twice in subsection (b).

JUDICIAL DECISIONS

Notice of appointment. — This section does not provide that notice of appointment by the grand jury is essential to the notice's validity since the publication of the notice provided by this section is directory only. Burpee v. Logan, 216 Ga. 434, 117 S.E.2d 339 (1960).

Writ of mandamus proper. — Trial court did not err in granting a citizen's motion for a writ of mandamus compelling a superior court clerk's compliance, with respect to the appointments of county board of equalization (BOE) members, with the public notice requirements of O.C.G.A. § 15-12-81 because there was no error in granting mandamus to require the clerk to comply with the clerk's mandatory duties under § 15-12-81; because BOE members are appointed by the grand jury, O.C.G.A. § 48-5-311(c)(2), their appointments are plainly subject to the provisions of § 15-12-81. Everetteze v. Clark, 286 Ga. 11, 685 S.E.2d 72 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Advertisements must be made within 60 days of appointment, selection, or election. 1974 Op. Att'y Gen. No. U74-37.

Commission valid if clerk fails to publish notice. — After the commission of appointment of a member of a county board of education had been issued by the Secretary of State, it was valid notwithstanding the fact that the clerk failed to publish the notice pursuant to Ga. L. 1959, p. 424, §§ 1 and 2 (see now O.C.G.A. § 15-12-81). 1963-65 Op. Att'y Gen. p. 107.

Clerk responsible for failure to publish notice. — If the clerk failed to publish the notice pursuant to Ga. L. 1959, p. 424, §§ 1 and 2 (see now O.C.G.A. § 15-12-81), the clerk was responsible for the clerk's own negligence under former

Code 1933, §§ 24-2714, 24-2715, and 24-2721 (see now O.C.G.A. §§ 15-6-61 and 15-6-81). 1963-65 Op. Att'y Gen. p. 107.

Recommendations for county registrars. — Advertisement provisions of this section were not applicable to recommendations of grand jury for county registrars. 1960-61 Op. Att'y Gen. p. 209.

15-12-82. Change of venue in criminal grand jury investigation.

(a) The judges of the superior courts are authorized and empowered to transfer the investigation by a grand jury from the county where the crime was committed to the grand jury in any other county in this state when it appears that a qualified grand jury cannot be had for the purpose of such investigation in the county where the crime was committed. The county master jury list shall be exhausted in trying to secure a qualified jury before a transfer of the investigation shall be made, unless the accused consents to a transfer.

(b) In order to secure a transfer under this Code section, the district attorney shall file a written motion asking for the transfer, stating the reason for transfer, and naming the day and hour when the motion is to be heard. He shall serve the accused with a copy of the motion at least one day before the hearing of the motion if the accused is in the custody of the officers of the court. In the event the accused is not in the custody of the officers of the court, service may be perfected in any manner reasonably calculated to give notice to the accused. In the event that the accused cannot be located, notice by publication may be used, as ordered by the court.

(c) The district attorney and the counsel for the accused may, by agreement, determine the county to which the transfer of the investigation shall be made, but in the event they do not agree it shall be the duty of the presiding judge to name the county to which the transfer shall be made.

(d) The sheriff and the clerk of the county in which the crime was committed shall be qualified and authorized to perform the duties of such officers in the same manner as if there had been no change of venue. Any order or summons issued in connection with the investigation or trial shall be as binding as if no change of venue had been made.

(e) The expenses of the investigation and trial shall be paid by the county in which the crime was committed, and no greater amount shall be paid as per diem or for mileage than would have been paid in the event the investigation and trial had been in the county where the crime was committed. However, no change of venue shall be had for the trial of the accused except as provided by law, unless by consent of the accused. (Ga. L. 1922, p. 193, §§ 1, 3-6, 8; Code 1933, §§ 59-501, 59-502, 59-503, 59-504, 59-505, 59-506; Ga. L. 2011, p. 59, § 1-36/HB 415.)

Cross references. — Change of venue in criminal cases generally, Ga. Const. 1983, Art. VI, Sec. II, Para. VIII, and § 17-7-150 et seq.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Officers of county receiving case not prohibited from acting. — While this section provides that in such cases the sheriff and clerk of the county in which the crime was committed "shall be qualified and authorized to perform the duties of said officers in the same manner as if there had been no change of venue," yet this language does not authorize a construction that would prohibit the sheriff and clerk of the county to which the case has been transferred on change of venue from performing any of the duties of sheriff and clerk in connection with the case so transferred. Harris v. State, 191 Ga. 243, 12 S.E.2d 64 (1940) (see now O.C.G.A. § 15-12-82).

Words "qualified and authorized" mean that officers are permitted to act but are not required to do so. Harris v. State, 191 Ga. 243, 12 S.E.2d 64 (1940).

Indictment need not show change. — Indictment is not void for the reason that the jurisdiction of the grand jury of a county to which the investigation was transferred to return the indictment did not appear from the indictment, it not being stated therein that the investigation of the crime had been transferred. Howell v. State, 162 Ga. 14, 134 S.E. 59 (1926); Sallette v. State, 162 Ga. 442, 134 S.E. 68 (1926); Sallette v. State, 35 Ga. App. 658, 134 S.E. 203, cert. denied, 35 Ga. App. 808, 134 S.E. 203 (1926).

Cited in Thompson v. State, 47 Ga. App. 229, 170 S.E. 328 (1933); Cochran v. State, 151 Ga. App. 478, 260 S.E.2d 391 (1979); Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003).

15-12-83. Attendance of stenographer at grand jury proceeding; use of recording device in lieu of stenographer.

(a) This Code section shall apply to all counties of this state which according to the United States decennial census of 1970 or any future such census have a population of 150,000 or more.

(b) In any county of this state referred to in subsection (a) of this Code section, a stenographer is authorized to be present and in attendance upon the grand jury while any witness is being examined by the grand jury. Before attending the grand jury, the stenographer shall take the following oath:

> "I do solemnly swear that I will keep secret all things and matters coming to my knowledge while in attendance upon the grand jury, so help me God."

(c) The district attorney of the circuit in which the county is located shall appoint the stenographer and fix the compensation therefor, such compensation to be paid by the county.

(d) The stenographer is authorized to take and transcribe the testimony or any part of the testimony of any witness who testifies before

the grand jury and to furnish the transcript of testimony to the grand jury or the district attorney. The stenographer shall be incompetent to testify at any hearing or trial concerning any matter or thing coming to the knowledge of the stenographer while in attendance upon the grand jury.

(e) In any county of this state having a population of 200,000 or more according to the United States decennial census of 1970 or any future such census, a recording device may be used in lieu of the stenographer provided for in subsection (a) of this Code section. Any person transcribing testimony from such recording shall be incompetent to testify at any hearing or trial concerning any matter or thing coming to the knowledge of the person from the recordings. (Ga. L. 1960, p. 2530, § 1; Ga. L. 1976, p. 2638, § 1; Code 1981, § 15-12-83, enacted by Ga. L. 1982, p. 2107, § 13; Ga. L. 1994, p. 237, § 2; Ga. L. 1999, p. 81, § 15.)

Part 2

Special Purpose Grand Juries

15-12-100. Procedure for impaneling special grand jury; number of jurors; foreperson; powers of jury.

(a) The chief judge of the superior court of any county to which this part applies, on his own motion or on petition of any elected public official of the county or of a municipality lying wholly or partially within the county, may request the judges of the superior court of the county to impanel a special grand jury for the purpose of investigating any alleged violation of the laws of this state or any other matter subject to investigation by grand juries as provided by law.

(b) Until July 1, 2012, the chief judge of the superior court of the county shall submit the question of impaneling a special grand jury to the judges of the superior court of the county and, if a majority of the total number of the judges vote in favor of impaneling a special grand jury, the members of a special grand jury shall be drawn in the manner prescribed by Code Section 15-12-62. On and after July 1, 2012, the chief judge of the superior court of the county shall submit the question of impaneling a special grand jury to the judges of the superior court of the county and, if a majority of the total number of the judges vote in favor of impaneling a special grand jury, the members of a special grand jury shall be chosen in the manner prescribed by Code Section 15-12-62.1. Any special grand jury shall consist of not less than 16 nor more than 23 persons. The foreperson of any special grand jury shall be selected in the manner prescribed by Code Section 15-12-67.

(c) While conducting any investigation authorized by this part, investigative grand juries may compel evidence and subpoena wit-

nesses; may inspect records, documents, correspondence, and books of any department, agency, board, bureau, commission, institution, or authority of the state or any of its political subdivisions; and may require the production of records, documents, correspondence, and books of any person, firm, or corporation which relate directly or indirectly to the subject of the investigation being conducted by the investigative grand jury. (Code 1933, § 59-602a, enacted by Ga. L. 1974, p. 270, § 1; Ga. L. 2011, p. 59, § 1-37/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For annual survey on criminal law, see 64 Mercer L. Rev. 83 (2012).

JUDICIAL DECISIONS

Oath requirement inapplicable to civil investigations. — O.C.G.A. § 15-12-68 is irrelevant to civil investigations conducted pursuant to O.C.G.A. § 15-12-71 and/or O.C.G.A. § 15-12-100 et seq. State v. Bartel, 223 Ga. App. 696, 479 S.E.2d 4 (1996).

No particular oath is required for witnesses in civil investigations; thus, it was error to dismiss a perjury indictment on the basis of a deficient oath since the oath administered named the grand jury, specified the type of investigation, named the subject entities being investigated, and contained accepted language regarding the promise and obligation to testify truthfully. State v. Bartel, 223 Ga. App. 696, 479 S.E.2d 4 (1996).

Special purpose grand jury not authorized to return criminal indictment. — Trial court erred in holding that a special purpose grand jury was authorized to return a criminal indictment against a county commissioner because there was no language under O.C.G.A. § 15-12-100(a) giving a special purpose grand jury the power to return a criminal indictment; if the legislature had intended to empower a special purpose grand jury with the same powers and duties as a regular grand jury as provided in O.C.G.A. § 15-12-71, the legislature could have provided to that effect in § 15-12-100 or made reference to the powers enumerated in O.C.G.A. § 15-12-71. Kenerly v. State, 311 Ga. App. 190, 715 S.E.2d 688 (2011), cert. denied, 2012 Ga. LEXIS 265 (Ga. 2012).

Impact of special grand jury's overreach. — Although the defendant established a violation of the impaneling order, which fixed the scope of the special purpose grand jury's investigative powers to county corruption, but not city, and it also constituted a violation of O.C.G.A. §§ 15-12-71 and 15-12-102, neither dismissal of the indictment nor suppression of the evidence was the proper remedy for the grand jury's overreach as no violation of the defendant's constitutional rights nor a structural defect in the grand jury process occurred. State v. Lampl, 296 Ga. 892, 770 S.E.2d 629 (2015).

15-12-101. Supervision of special grand jury; procedure for dissolution; additional investigation.

(a) When a special grand jury is impaneled pursuant to Code Section 15-12-100, the chief judge of the superior court of the county shall assign a judge of the superior court of the county to supervise and assist the special grand jury in carrying out its investigation and duties. The

judge so assigned shall charge the special grand jury as to its powers and duties and shall require periodic reports of the special grand jury's progress, as well as a final report.

(b) When the judge assigned to a special grand jury decides that the special grand jury's investigation has been completed or on the issuance of a report by the special grand jury of the matter investigated by it reporting that the investigation has been completed, the judge so assigned shall recommend to the chief judge of the superior court that the special grand jury be dissolved. The chief judge shall report the recommendation to the judges of the superior court of the county and, upon a majority thereof voting in favor of the dissolution of the special grand jury, the special grand jury shall stand dissolved. If a majority of the judges do not vote in favor of the dissolution of the special grand jury, the chief judge shall instruct and charge the special grand jury as to the particular matters to be investigated; and the special grand jury shall be required to investigate further and establish a period of time within which the investigation shall be completed. At the expiration of the period of time, the special grand jury shall be dissolved. (Code 1933, § 59-603a, enacted by Ga. L. 1974, p. 270, § 1.)

15-12-102. Applicability of part.

This part shall apply only to grand juries of counties and consolidated city-county governments of this state having a population of 70,000 or more according to the United States decennial census of 1970 or any future such census. Except as otherwise provided by this part, the law relative to grand juries shall apply to the grand juries provided for by this part. (Code 1933, § 59-601a, enacted by Ga. L. 1974, p. 270, § 1; Ga. L. 1976, p. 982, § 1; Ga. L. 1982, p. 541, §§ 1, 2.)

JUDICIAL DECISIONS

Impact of special grand jury's overreach. — Although the defendant established a violation of the impaneling order, which fixed the scope of the special purpose grand jury's investigative powers to county corruption, but not city, and it also constituted a violation of O.C.G.A. §§ 15-12-71 and 15-12-102, neither dismissal of the indictment nor suppression of the evidence was the proper remedy for the grand jury's overreach as no violation of the defendant's constitutional rights nor a structural defect in the grand jury process occurred. State v. Lampl, 296 Ga. 892, 770 S.E.2d 629 (2015).

ARTICLE 5

TRIAL JURIES

Law reviews. — For note discussing racial discrimination in jury selection, see 1 Ga. L. Rev. 674 (1967).

RESEARCH REFERENCES

ALR. — Permitting jury in civil cases to examine, or take into jury room, the pleadings or copies thereof, 89 ALR 1260.

Member of grand or petit jury as officer within constitutional or statutory provisions in relation to oath or affirmation, 118 ALR 1098.

Permitting or refusing to permit jury in criminal case to examine or take into jury room the indictment or information or other pleading or copy thereof, 120 ALR 463.

Prejudicial effect of unauthorized view by jury in civil case of scene of accident or premises in question, 11 ALR3d 918.

Propriety of order forbidding news media from publishing names and addresses of jurors in criminal cases, 36 ALR4th 1126.

Propriety of use of multiple juries at joint trial of multiple defendants in state criminal prosecution, 41 ALR4th 1189.

Taking and use of trial notes by jury, 36 ALR5th 255.

Part 1

In General

Cross references. — Rendering of verdict in criminal action, T. 17, C. 9.

15-12-120. Selection and summoning of trial jurors.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-38/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Orig. Code 1863, § 3837; Code 1868, § 3859; Ga. L. 1869, p. 139, § 1; Code 1873, § 3931; Ga. L. 1878-79, p. 27, § 1; Code 1882, § 3931; Penal Code 1895, § 852; Penal Code 1910, § 856; Code 1933, § 59-701; Ga. L. 2011, p. 59, § 1-38/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-120.1. Choosing of trial jurors.

On and after July 1, 2012, trial juries shall be chosen from a county master jury list. The presiding judge shall order the clerk to choose the number of jurors necessary to conduct the business of the court. The clerk shall choose the names of persons to serve as trial jurors for the trial of civil and criminal cases in the court. Such trial jurors shall be summoned in the same manner as provided in Code Section 15-12-65.1. (Code 1981, § 15-12-120.1, enacted by Ga. L. 2011, p. 59, § 1-39/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For article on the effect on jury service of a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

For comment on Allen v. State, 110 Ga. App. 33, 137 S.E.2d 711 (1964), see 1 Ga. St. B.J. 371 (1965).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under Penal Code 1895, § 852; Penal Code 1910, § 856; Code 1933, § 59-701; and former O.C.G.A. § 15-12-120 are included in the annotations for this Code section.

Statutes for selecting, drawing, and summoning jurors form no part of system to procure an impartial jury to parties, but establish a mode of distributing jury duties among persons in the respective counties and of setting apart those of supposed higher qualifications for the most important branch of that service. Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931) (decided under former Penal Code 1910, § 856).

Statutes for selecting, drawing, and summoning jurors are merely directory. Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931) (decided under former Penal Code 1910, § 856).

Requirement that juries must be drawn in open court is safeguard against secret proceedings; it is a procedure which enables the public to observe the conduct of the judge in drawing juries and thus prevent any possible corruption or suspicion of corruption in this vital part of the jury system. Blevins v. State, 220 Ga. 720, 141 S.E.2d 426 (1965) (decided under former Code 1933, § 59-701).

Compliance with open court requirement essential to prosecution's validity. — Compliance with the requirement that juries must be drawn in open court is essential to the validity of the criminal prosecution. Blevins v. State, 220 Ga. 720, 141 S.E.2d 426 (1965) (decided under former Code 1933, § 59-701).

Constitutionality of open court requirement. — Petitioner in habeas corpus hearing is not deprived of due process or equal protection because jurors must be drawn in open court. Hill v. Stynchcombe, 225 Ga. 122, 166 S.E.2d 729 (1969) (decided under former Code 1933, § 59-701).

Manner of drawing. — Under former Code 1933, § 59-701 (see now O.C.G.A. § 15-12-120.1), judge was required to draw traverse jurors in open court in same way as former Code 1933, § 59-203 (see now O.C.G.A. § 15-12-62.1) required grand jurors be drawn. Blevins v. State, 220 Ga. 720, 141 S.E.2d 426 (1965) (decided under former Code 1933, § 59-701).

Trial judge is not required physically to pass the judge's own hand into the box in which the name cards are kept to grasp the card in the judge's fingers and the statute was complied with when a small child drew a card under the scrutiny of the trial judge. Sanders v. State, 164 Ga. App. 13, 296 S.E.2d 213 (1982) (decided under former O.C.G.A. § 15-12-20).

Jury service by convicted felon. — There is no statute specifically prohibiting jury service by one who has been convicted of a felony. Bennett v. State, 262 Ga. 149, 414 S.E.2d 218 (1992), cert. denied, 505 U.S. 1225, 113 S. Ct. 416, 121 L. Ed. 2d 340 (1992) (decided under former O.C.G.A. § 15-12-20).

Provisions for selection of jurors at close of each term for service at ensuing term is not exclusive as indicated by former Code 1933, § 59-713 (see now O.C.G.A. § 15-12-129). Harrison v. State, 120 Ga. App. 812, 172 S.E.2d 328 (1969) (decided under former Code 1933, § 59-701).

Excusing juror not grounds for new trial. — If juror is excused from service because of private business and the number of jurors present is in excess of the number required by the law, excusal is not ground for new trial. Ellis v. State, 114 Ga. 36, 39 S.E. 881 (1901) (decided under former Penal Code 1895, § 852).

Cited in Williams v. State, 69 Ga. 11 (1882); Lynn v. Flanders, 141 Ga. 500, 81 S.E. 205 (1914); Pollard v. State, 148 Ga. 447, 96 S.E. 997 (1918); Culpepper v. United States Fid. & Guar. Co., 199 Ga. 56, 33 S.E.2d 168 (1945); Hill v. Dutton, 440 F.2d 34 (5th Cir. 1971).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 15-12-20 are included in this Code section.

One who has been convicted of a felony is not eligible to serve on either a grand or trial jury. 1983 Op. Att'y Gen. No. 83-33 (decided under former O.C.G.A. § 15-12-20).

Conviction for a misdemeanor does not affect one's eligibility to serve on either a grand or trial jury. 1983 Op. Att'y Gen. No. 83-33 (decided under former O.C.G.A. § 15-12-20).

Conviction resulting from a nolo contendere plea cannot be used to impose any disability including disqualification from voting, holding public office, and jury service. 1983 Op. Att'y Gen. No. 83-33 (decided under former O.C.G.A. § 15-12-20).

Person who has been placed on probation pursuant to the First Offender Act, O.C.G.A. § 42-8-60 et seq., does not become incompetent to serve on a grand or petit jury under O.C.G.A. § 15-12-60(b)(2) either before or after being discharged without court adjudication of guilt. 1990 Op. Att'y Gen. No. U90-6 (decided under former O.C.G.A. § 15-12-20).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, §§ 8, 19, 21. 47 Am. Jur. 2d, Jury, § 101 et seq.

C.J.S. — 50A C.J.S., Juries, § 311 et seq.

ALR. — Effect of, and remedies for, exclusion of eligible class or classes of persons from jury list in criminal case, 52 ALR 919.

Membership in secret order or organization for the suppression of crime as proper subject of examination, or ground of challenge, of juror, 158 ALR 1361.

Exclusion of women from grand or trial jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction, 9 ALR2d 661; 70 ALR5th 587.

Indoctrination by court of persons summoned for jury service, 89 ALR2d 197.

Confusion of names or identities in drawing, summoning, calling, impaneling, or examining jurors in civil case, as affecting verdict, 89 ALR2d 1242.

Prior service on grand jury which considered indictment against accused as disqualification for service on petit jury, 24 ALR3d 1236.

Validity of jury selection as affected by accused's absence from conducting of procedures for selection and impaneling of final jury panel for specific case, 33 ALR4th 429.

Prejudicial effect of jury's procurement or use of book during deliberations in criminal cases, 35 ALR4th 626.

Propriety of substituting juror in bifurcated state trial after end of first phase and before second phase is given to jury, 89 ALR4th 423.

Prejudicial effect of juror's inability to comprehend English, 117 ALR5th 1.

15-12-121. Procedure when judge fails to draw jurors.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-40/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1878-79, p. 27, § 2; Code 1882, § 3910g; Penal Code 1895, § 821; Penal Code 1910, § 822; Code 1933, § 59-702; Ga. L. 2011, p. 59, § 1-40/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-122. Demand of jury panels from which to select jury in civil actions in the state courts and the superior courts.

(a)(1) Except as provided in paragraph (2) of this Code section, in all civil actions in the state courts, each party may demand a full panel of 12 competent and impartial jurors from which to select a jury. When one or more of the regular panel of trial jurors is absent or for any reason disqualified, the judge, at the request of counsel for either party, shall cause the panel to be filled by additional competent and impartial jurors to the number of 12 before requiring the parties or their counsel to strike a jury. In all cases the parties or their attorneys may strike alternately, with the plaintiff exercising the first strike, until a jury of six persons is impaneled to try the case.

(2) In all civil actions in the state courts in which the claim for damages is greater than $25,000.00, either party may demand in writing prior to the commencement of the trial term that the case be tried by a jury of 12. If such a demand is made, the judge shall follow the procedures for superior courts of subsection (b) of this Code section.

(b) In all civil actions in the superior courts, each party may demand a full panel of 24 competent and impartial jurors from which to select a jury. When one or more of the regular panel of trial jurors is absent or for any reason disqualified, the judge, at the request of counsel for either party, shall cause the panel to be filled by additional competent and impartial jurors to the number of 24 before requiring the parties or their counsel to strike a jury. In all cases the parties or their attorneys may strike alternately, with the plaintiff exercising the first strike, until a jury of 12 persons is impaneled to try the case. (Ga. L. 1869, p. 139, § 6; Code 1873, § 3932; Code 1882, § 3932; Penal Code 1895, § 853; Penal Code 1910, § 857; Code 1933, § 59-703; Ga. L. 1975, p. 1331, § 1; Ga. L. 1985, p. 1511, § 4; Ga. L. 1995, p. 1292, § 7; Ga. L. 2002, p. 803, § 1; Ga. L. 2004, p. 631, § 15.)

Cross references. — Limitations on the number of persons required to constitute a jury in superior court, Ga. Const. 1983, Art. I, Sec. I, Para. XI. Stipulation by parties to civil action that trial may be conducted with any number of jurors less than that fixed by statute, and as to designation of alternate jurors, § 9-11-47.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "twelve" was changed to "12" in the last sentence of subsection (b) of this Code section.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 68 (2002).

JUDICIAL DECISIONS

Constitutionality of six-person limitation. — Six-person limitation in O.C.G.A. § 15-12-122 for petit juries in civil actions seeking recoveries of less

than $5,000.00 (now $10,000.00), exclusive of interest and costs, does not deny equal protection of the laws. Wall v. Citizens & S. Bank, 247 Ga. 216, 274 S.E.2d 486 (1981).

Effect of request for six-person jury. — An attorney, when asked by the court whether the attorney wanted a 12-person jury, responded that the attorney wanted a six-person jury, that statement was tantamount to an acknowledgment that the client's claim was for less than $10,000. Super Disct. Mkts., Inc. v. Kubitz, 197 Ga. App. 224, 398 S.E.2d 252 (1990).

Request for 12-person jury. — Trial court should grant the request for a 12-person jury unless the record affirmatively shows that the claim is for less than $10,000. Super Disct. Mkts., Inc. v. Kubitz, 197 Ga. App. 224, 398 S.E.2d 252 (1990).

Since the record did not affirmatively show that a claim was for less than $10,000, the trial court erred in not granting appellants' request for a 12-person jury. B.C.B. Co. v. Troutman, 200 Ga. App. 671, 409 S.E.2d 218 (1991).

State court is not required to accommodate an oral request for a 12-person jury. Wolf Properties, Inc. v. Rissus Corp., 232 Ga. App. 218, 501 S.E.2d 597 (1998).

In a civil case because the defendants are not entitled to separate trials each is not entitled to strike the full number of jurors but all must join in striking the jury. Pool v. Gramling, Spalding & Co., 88 Ga. 653, 16 S.E. 52 (1891); New York Life Ins. Co. v. Hartford Accident & Indem. Co., 181 Ga. 55, 181 S.E. 755 (1935).

Realignment of parties. — Trial court did not abuse the court's broad discretion in realigning two parties, plaintiffs in the consolidated third-party action, as parties plaintiff for the purpose of allocating peremptory challenges. Naimat v. Shelbyville Bottling Co., 240 Ga. App. 693, 524 S.E.2d 749 (1999).

Interpleading defendants. — This section authorizes only 12 strikes and makes no provision whereby interpleading defendants may consume all 12 strikes. Collins v. Cooper, 145 Ga. App. 559, 244 S.E.2d 95 (1978).

Number of strikes when defendant fails to appear. — When the defendant fails to appear for the trial on damages, and the court permits the plaintiff to exercise strikes forfeited by the defaulting party, permitting the plaintiff to exercise twice the number of peremptory strikes to which the plaintiff was otherwise entitled under subsection (b) of this section in selecting a jury of 12, reversal of the court's ruling was required. Tri-State Culvert Mfg., Inc. v. White, 151 Ga. App. 529, 260 S.E.2d 550 (1979).

Number of strikes in consolidated case. — If several cases pending against an estate are consolidated in one proceeding against a receiver therefor, the parties so joined have a right to only six strikes in selecting a jury. Ellis v. Geer, 36 Ga. App. 519, 137 S.E. 290 (1927).

Challenge to manner in which jury panel is drawn must be made before verdict, no matter when it is discovered. Toole v. I.T.T. Grinnell Corp., 156 Ga. App. 591, 275 S.E.2d 97 (1980).

Challenge to striking of jury not to be raised for first time on appeal. — If a jury is stricken in the absence of counsel in a civil case, and counsel appears thereafter and engages in the trial, conceding that such absence is on account of leave by the court, and no objection is made to such jury so selected on account of such leave, but if the first complaint thereto appears in a motion for new trial, the Court of Appeals will not reverse the judgment of the court below on assignment of error to the overruling of such motion for new trial. Holtsinger v. Scarborough, 71 Ga. App. 318, 30 S.E.2d 835 (1944).

No exhaustion of peremptory strikes required to show harm. — In a medical malpractice case, the appellate court erred by concluding that the plaintiff could not prove the plaintiff was harmed by the trial court's refusal to strike four allegedly biased jurors because the plaintiff did not show that the plaintiff had been forced to exhaust the plaintiff's peremptory strikes to eliminate those jurors because the rule in Harris, not requiring exhaustion of peremptory strikes as a condition of establishing harm to criminal cases also applies in civil cases. Stolte v. Fagan, 291 Ga. 477, 731 S.E.2d 653 (2012).

Waiver of right to list. — Right to list is waived if counsel fails to direct atten-

tion of court to omission. Schumpert v. State, 9 Ga. App. 553, 71 S.E. 879 (1911).

If regular number of strikes are exceeded and jury is reduced to 11, last one stricken should be restored. Pool v. Gramling, Spalding & Co., 88 Ga. 653, 16 S.E. 52 (1891).

Cited in Hilton & Dodge Lumber Co. v. Ingram, 135 Ga. 696, 70 S.E. 234 (1911); Metropolitan Life Ins. Co. v. Scarboro, 42 Ga. App. 423, 156 S.E. 726 (1930); Lingo v. State, 224 Ga. 333, 162 S.E.2d 1 (1968); First Fid. Ins. Corp. v. Busbia, 128 Ga. App. 485, 197 S.E.2d 396 (1973); Wall v. Benningfield, 237 Ga. 173, 227 S.E.2d 13 (1976); Johnson v. Jackson, 140 Ga. App. 252, 230 S.E.2d 756 (1976); Mercer v. Braswell, 140 Ga. App. 624, 231 S.E.2d 431 (1976); White v. Cline, 174 Ga. App. 448, 330 S.E.2d 386 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Provision for six person jury not limited to tort actions. — This section, in providing for a six person jury in civil cases when the claim for damages is less than $5,000.00 (now $10,000.00), is applicable to any cause of action when damages are claimed and the sum does not exceed $5,000.00 (now $10,000.00), irrespective of whether the claim is based in tort or otherwise. 1975 Op. Att'y Gen. No. U75-58.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 104, 105.

C.J.S. — 50A C.J.S., Juries, § 311 et seq.

ALR. — Power of court to exclude from panel or venire for particular case all persons belonging to a class membership in which may be supposed to involve bias or prejudice, 105 ALR 1527.

Validity and effect of plan or practice of consulting preferences of persons eligible for jury service as regards periods or times of service or character of actions, 112 ALR 995.

Effect of, and remedies for, exclusion of eligible class of persons from jury list in civil case, 166 ALR 1422.

Prejudicial effect of reference on voir dire examination of jurors to settlement efforts or negotiations, 67 ALR2d 560.

Jury: number of peremptory challenges allowable in civil case where there are more than two parties involved, 32 ALR3d 747.

15-12-123. Demand of jury panels in civil actions in the state courts.

(a) Except as provided in subsection (b) of this Code section, in all civil actions in the state courts, each party may only demand a panel of 12 competent and impartial jurors from which to select a jury. When one or more of the regular panel of trial jurors is absent or for any reason is disqualified, the presiding judge, at the request of counsel for either party, shall cause the panel to be filled by additional competent and impartial jurors to the number of 12 before requiring the parties or their counsel to strike a jury.

(b) In all civil actions in the state courts in which a jury of 12 is demanded, the judge shall follow the procedures for superior courts as provided in subsection (b) of Code Section 15-12-122. (Ga. L. 1869, p. 139, § 6; Code 1873, § 3932; Ga. L. 1878-79, p. 145, § 1; Code 1882, § 3932; Penal Code 1895, § 854; Penal Code 1910, § 858; Code 1933,

§ 59-704; Ga. L. 1975, p. 1331, § 2; Ga. L. 1982, p. 3, § 15; Ga. L. 1985, p. 1511, § 5; Ga. L. 1995, p. 1292, § 8.)

Cross references. — Limitations on the number of persons required to constitute a jury in superior court, Ga. Const. 1983, Art. I, Sec. I, Para. XI.

JUDICIAL DECISIONS

Quo warranto proceedings. — This section is applicable to all civil cases and embraces practice in trial of quo warranto proceedings. Hathcock v. McGouirk, 119 Ga. 973, 47 S.E. 563 (1904).

Question as to competency and impartiality of jurors is to be determined before parties begin to strike jury. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934).

Parties are not required to make investigations out of court to determine whether jurors who are summoned are disqualified in their cases, not only is such a duty not placed by the law upon parties and their counsel, but the contrary practice is to be encouraged for obvious reasons. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934).

Removal of disqualified jurors. — Parties should not be required to use their strikes in an effort to remove disqualified jurors. Jones v. Cloud, 119 Ga. App. 697, 168 S.E.2d 598 (1969).

No exhaustion of peremptory strikes required to show harm. — In a medical malpractice case, the appellate court erred by concluding that the plaintiff could not prove the plaintiff was harmed by the trial court's refusal to strike four allegedly biased jurors because the plaintiff did not show that the plaintiff had been forced to exhaust the plaintiff's peremptory strikes to eliminate those jurors because the rule in Harris, not requiring exhaustion of peremptory strikes as a condition of establishing harm to criminal cases also applies in civil cases. Stolte v. Fagan, 291 Ga. 477, 731 S.E.2d 653 (2012).

When improper overruling of challenge to juror not reversible error. — If a challenge is made and improperly overruled and such juror does not serve on the jury trying the case because the juror is stricken by the complaining party, such ruling is not error unless it appears that the party had to exhaust the party's peremptory challenges in order to get rid of the juror. Felker v. Johnson, 53 Ga. App. 390, 186 S.E. 144 (1936).

If the record does not show that a party has to exhaust the party's peremptory strikes in order to exclude a juror properly challenged for cause, the error is not harmful. Sheffield v. Lewis, 246 Ga. 19, 268 S.E.2d 615 (1980).

Juror's indication that evidence will prejudice juror. — When a juror responds to a voir dire question and by the juror's answer indicates that the juror may be so prejudiced by certain anticipated evidence that the juror cannot render a fair verdict as to the cause of the accident in question, the juror should be excused for cause. Jones v. Cloud, 119 Ga. App. 697, 168 S.E.2d 598 (1969).

Duty of parties to call attention to disqualifications. — When parties are furnished with a list of the jury, it is their duty, if they know that any of the jurors are disqualified, to call attention to the disqualification, or the disqualification will be held to have been waived. If they have reasonable grounds to suspect that any of the jurors are disqualified, it is their duty to call attention to the fact so that due inquiry may be made of the panel. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934).

Third-party defendants. — Judge, having the discretion to sever a third-party claim, also has the discretion to grant a third-party defendant six additional strikes. However, there is no right to sever claims against joint tort-feasors and no corresponding right to grant additional strikes. Mercer v. Braswell, 140 Ga. App. 624, 231 S.E.2d 431 (1976).

Codefendants with adverse interests. — Section does not allow additional strikes to codefendants despite their ad-

verse interests. Mercer v. Braswell, 140 Ga. App. 624, 231 S.E.2d 431 (1976).

Defendants in civil trial. — In a civil case, the defendants are not entitled to a separate trial, nor is each entitled to strike the full number of jurors, but all of the defendants must join in striking the jury. New York Life Ins. Co. v. Hartford Accident & Indem. Co., 181 Ga. 55, 181 S.E. 755 (1935).

Impleading defendants. — There is no authority for the proposition that impleading defendants are legally entitled to additional jury strikes. Sheffield v. Lewis, 246 Ga. 19, 268 S.E.2d 615 (1980).

Employee not competent to try case involving employer. — Failure to remove jurors thus disqualified and fill the panel as provided by this section is ground for new trial. Atlantic Coast Line R.R. v. Bunn, 2 Ga. App. 305, 58 S.E. 538 (1907).

Members of corporation may not serve if corporation defendant. — To permit the members of the defendant corporation to try the case of their corporation would be in effect to permit the defendant to try the defendant's own case as a juror. To permit a juror to serve in the juror's own case violates the fundamental principle that jury trials must be fair and free from suspicion of bias or prejudice, and is contrary to the principle announced in this section. Bryan v. Moncrief Furnace Co., 168 Ga. 825, 149 S.E. 193 (1929) (see now O.C.G.A. § 15-12-123).

Officer, employee, or stockholder of indemnity company, or one related to a stockholder, is disqualified to serve as juror in case involving the company. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934).

Corporate stockholders and mutual insurance company policyholders. — Stockholders of a corporation which is a party to a suit are automatically disqualified from serving as jurors therein because the stockholders necessarily have a direct interest in the outcome of the case. Similarly, the stockholders of an insurance company or the policyholders of a mutual insurance company, because of their interest in the assets and earnings of the company, may not serve as jurors in the trial of a case in which the company is exposed to liability. Thompson v. Sawnee Elec. Membership Corp., 157 Ga. App. 561, 278 S.E.2d 143 (1981).

Members of electric membership corporation. — Members of an electric membership corporation are in the same position as the stockholders of a corporation or the policyholders of a mutual insurance company, as regards their right to share in the net earnings of the business. Accordingly, the members of an electric membership corporation are disqualified from service as jurors in the trial of a case in which damages are sought from the corporation. Thompson v. Sawnee Elec. Membership Corp., 157 Ga. App. 561, 278 S.E.2d 143 (1981).

It does not follow that a similar exception, like that provided by O.C.G.A. §§ 15-12-136 and 15-12-137 to the rule precluding service by jurors with a stake in the outcome of a case, exists for members of electric membership corporations. Indeed, the absence of a similar statute applicable to electric membership corporations members would appear to be authority for a conclusion that no such exception exists. Thompson v. Sawnee Elec. Membership Corp., 157 Ga. App. 561, 278 S.E.2d 143 (1981).

Trial court held to have not erred in refusing to excuse juror for cause. See Cone v. Johnson, 251 Ga. 371, 306 S.E.2d 244 (1983).

Cited in Nobles v. State, 12 Ga. App. 355, 77 S.E. 184 (1913); Pollard v. State, 148 Ga. 447, 96 S.E. 977 (1918); Whitworth v. State, 155 Ga. 395, 117 S.E. 450 (1923); Metropolitan Life Ins. Co. v. Scarboro, 42 Ga. App. 423, 156 S.E. 726 (1930); Gossett v. State, 203 Ga. 692, 48 S.E.2d 71 (1948); Pickering v. Wagnon, 91 Ga. App. 610, 86 S.E.2d 621 (1955); American Cas. Co. v. Seckinger, 108 Ga. App. 262, 132 S.E.2d 794 (1963); Derryberry v. Higdon, 116 Ga. App. 381, 157 S.E.2d 559 (1967); Lingo v. State, 224 Ga. 333, 162 S.E.2d 1 (1968); State Hwy. Dep't v. Eagle Constr. Co., 125 Ga. App. 678, 188 S.E.2d 810 (1972); Georgia Power Co. v. Wright, 134 Ga. App. 474, 214 S.E.2d 724 (1975); Wall v. Benningfield, 237 Ga. 173, 227 S.E.2d 13 (1976); Carr v. Carr, 240 Ga. 161, 240 S.E.2d 50 (1977).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 104, 105.

C.J.S. — 50A C.J.S., Juries, § 269 et seq.

15-12-124. Tales jurors in civil actions.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-41/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1869, p. 139, § 8; Code 1873, § 3937; Code 1882, § 3937; Ga. L. 1884-85, p. 63, § 1; Penal Code 1895, § 863; Penal Code 1910, § 867; Code 1933, § 59-711; Ga. L. 1937, p. 466, § 2; Ga. L. 2011, p. 59, § 1-41/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-124.1. Insufficient number of persons to complete panel of trial jurors.

On and after July 1, 2012, when from challenge or from any other cause there is not a sufficient number of persons in attendance to complete a panel of trial jurors, the clerk shall choose and cause to be summoned additional prospective trial jurors. (Code 1981, § 15-12-124.1, enacted by Ga. L. 2011, p. 59, § 1-42/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 59-711 and former O.C.G.A. § 15-12-124 are included in the annotations for this Code section.

Juror having deficiency propter defectum may be rendered specially competent by failure of parties to challenge. Lindsey v. State, 57 Ga. App. 158, 194 S.E. 833 (1938) (decided under former Code 1933, § 59-711).

Error may not be first asserted after verdict. — If sheriff, without the knowledge and consent of movants, selected as jurors certain persons whose names were not drawn from the jury box as required, such point cannot be successfully raised for the first time after the verdict. Thomasson v. Hudmon, 185 Ga. 753, 196 S.E. 462 (1938) (decided under former Code 1933, § 59-711).

Cited in Gunter v. State, 243 Ga. 651, 256 S.E.2d 341 (1979); Sanders v. State, 151 Ga. App. 590, 260 S.E.2d 504 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 123.

C.J.S. — 50A C.J.S., Juries, §§ 332, 333.

15-12-125. Demand of jury panels for misdemeanor trials.

For the trial of misdemeanors in all courts, each party may demand a full panel of 12 competent and impartial jurors from which to select a jury. When one or more of the regular panel of trial jurors is absent or for any reason disqualified, the judge, at the request of counsel for either party, shall cause the panel to be filled by additional competent and impartial jurors to the number of 12 before requiring the parties or their counsel to strike a jury. From this panel, the accused and the state shall each have the right to challenge three jurors peremptorily. The accused and the state shall exercise their challenges as provided in Code Section 15-12-166. The remaining six jurors shall constitute the jury. (Laws 1836, Cobb's 1851 Digest, p. 842; Code 1863, § 4531; Code 1868, § 4550; Ga. L. 1869, p. 139, § 6; Code 1873, § 3934; Code 1882, §§ 3934, 4644; Penal Code 1895, § 857; Penal Code 1910, § 861; Code 1933, § 59-707; Ga. L. 1985, p. 1511, § 6; Ga. L. 1995, p. 1292, § 9; Ga. L. 2005, p. 20, § 4/HB 170; Ga. L. 2011, p. 59, § 1-43/HB 415.)

Editor's notes. — Ga. L. 2005, p. 20, § 1/HB 170, not codified by the General Assembly, provides that: "This act shall be known and may be cited as the 'Criminal Justice Act of 2005.'"

Ga. L. 2005, p. 20, § 17/HB 170, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all trials which commence on or after July 1, 2005.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For article on 2005 amendment of this Code section, see 22 Ga. St. U.L. Rev. 29 (2005).

JUDICIAL DECISIONS

Constitutionality of prior provisions. — Enactment of O.C.G.A. § 15-12-125 does not require that prior legislative enactments of varying allocations of peremptory strikes be held as constitutionally defective. Hawkins v. State, 255 Ga. 172, 336 S.E.2d 220 (1985).

Offenses committed prior to 1985 amendment. — Defendant's right to be tried by a 12-member jury for an offense committed prior to the effective date of the 1985 amendment to O.C.G.A. § 15-12-125 was a substantial right which could not be set aside ex post facto. Campbell v. State, 178 Ga. App. 814, 344 S.E.2d 745 (1986).

This section applies exclusively to superior courts. Welborne v. Donaldson, 115 Ga. 563, 41 S.E. 999 (1902).

No exception for misdemeanor of a "high and aggravating nature." — Argument of a defendant convicted of sexual battery that O.C.G.A. § 15-12-125 is inapplicable to those cases in which the accused is on trial for a misdemeanor of a "high and aggravating nature" fails given the plain language of the statute. For such an argument to succeed, such limitation would have to be apparent from the face of the statute. Tharpe v. State, 207 Ga. App. 900, 429 S.E.2d 342 (1993).

Peremptory challenge is an arbitrary or capricious species of challenge to a certain number of jurors allowed to the parties without the necessity of their showing any cause therefor. In the very nature of such a challenge no reason need be shown or assigned for the exercise of the right. Crawford v. State, 159 Ga. App. 278, 283 S.E.2d 300 (1981).

Practice of striking from list is legal

equivalent of challenging. O'Byrne v. State, 29 Ga. 36 (1859); Smith v. State, 11 Ga. App. 89, 74 S.E. 711 (1912).

Joint misdemeanor defendants. — If two persons are jointly indicted in a misdemeanor case, each is entitled to the same number of peremptory challenges as the person would have if tried separately. Nobles v. State, 12 Ga. App. 355, 77 S.E. 184 (1913).

Striking should be alternating with defendant beginning and ending the strikes. Kelly v. State, 19 Ga. 425 (1856).

To test fairness of juror, counsel may ask the juror questions prescribed for use in trial of felonies, or such questions as will determine the juror's impartiality. Jacobs v. State, 1 Ga. App. 519, 57 S.E. 1063 (1907).

Failure to answer name. — Jury should be restruck if juror fails to answer to the juror's name. Clifton v. State, 53 Ga. 241 (1874); Garrison v. State, 97 Ga. 215, 22 S.E. 378 (1895).

Cited in Lamb v. State, 73 Ga. 587 (1884); McIntyre v. State, 190 Ga. 872, 11 S.E.2d 5 (1940); Reid v. State, 129 Ga. App. 657, 200 S.E.2d 454 (1973); McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981); Foster v. State, 258 Ga. App. 601, 574 S.E.2d 843 (2002); Stolte v. Fagan, 291 Ga. 477, 731 S.E.2d 653 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 21A Am. Jur. 2d., Criminal Law, §§ 978, 979.

C.J.S. — 50A C.J.S., Juries, §§ 130, 256 et seq., 328 et seq.

ALR. — Right to peremptory challenges in selection of jury to try issue of former conviction, 162 ALR 429.

Proof as to exclusion of or discrimination against eligible class or race in respect to jury in criminal case, 1 ALR2d 1291.

Peremptory challenge after acceptance of juror, 3 ALR2d 499.

Effect of allowing excessive number of peremptory challenges, 95 ALR2d 957.

Prior service on grand jury which considered indictment against accused as disqualification for service on petit jury, 24 ALR3d 1236.

Religious belief, affiliation, or prejudice of prospective jurors as proper subject of inquiry or grounds for challenge on voir dire, 95 ALR3d 172.

Additional peremptory challenges because of multiple criminal charges, 5 ALR4th 533.

Validity and construction of statute or court rule prescribing number of peremptory challenges in criminal cases according to nature of offense or extent of punishment, 8 ALR4th 149.

Cure of prejudice resulting from statement by prospective juror during voir dire, in presence of other prospective jurors, as to defendant's guilt, 50 ALR4th 969.

15-12-126. Additional jurors in misdemeanor cases.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-44/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1869, p. 139, §§ 8, 17; Ga. L. 1871-72, p. 42, § 1; Code 1873, § 3935; Code 1882, § 3935; Penal Code 1895, § 859; Ga. L. 1889, p. 118, § 1; Penal Code 1910, § 863; Code 1933, § 59-708; Ga. L. 1937, p. 466, § 2; Ga. L. 1985, p. 1511, § 7; Ga. L. 2011, p. 59, § 1-44/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-126.1. Absence of panels of trial jurors in misdemeanor cases; choosing and summoning make-up panels.

On and after July 1, 2012, when the regular panels of trial jurors cannot be furnished to make up panels of the correct number from

which to take juries in misdemeanor cases because of the absence of any of such panels, where jurors, or any part of a panel, are engaged in the consideration of a case, the presiding judge may cause the panels to be filled by summoning such numbers of persons who are competent jurors as may be necessary to fill the panels. Such panels shall be used as the regular panels are used. The clerk shall choose and cause to be summoned additional prospective trial jurors. (Code 1981, § 15-12-126.1, enacted by Ga. L. 2011, p. 59, § 1-45/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 59-711 and former O.C.G.A. § 15-12-124 are included in the annotations for this Code section.

Juror having deficiency propter defectum may be rendered specially competent by failure of parties to challenge. Lindsey v. State, 57 Ga. App. 158, 194 S.E. 833 (1938) (decided under former Code 1933, § 59-711).

Error may not be first asserted after the verdict. — If the sheriff, without the knowledge and consent of movants, selected as jurors certain persons whose names were not drawn from the jury box as required, such a point cannot be successfully raised for the first time after the verdict. Thomasson v. Hudmon, 185 Ga. 753, 196 S.E. 462 (1938) (decided under former Code 1933, § 59-711).

RESEARCH REFERENCES

C.J.S. — 50A C.J.S., Juries, § 328 et seq.

15-12-127 through 15-12-129.

Reserved. Repealed by Ga. L. 2011, p. 59, §§ 1-46—1-48/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1871-72, p. 47, § 3; Ga. L. 1873, p. 41, § 1; Code 1873, § 3936; Code 1882, § 3936; Code 1882, § 3942; Ga. L. 1882-83, p. 99, § 1; Ga. L. 1884-85, p. 41, § 1; Ga. L. 1884-85, p. 90, § 1; Penal Code 1895, § 862; Penal Code 1910, § 866; Penal Code 1895, § 866; Penal Code 1910, § 870; Penal Code 1895, § 871; Penal Code 1910, § 875; Code 1933, § 59-710; Code 1933, § 59-712; Code 1933, § 59-713; Ga. L. 2011, p. 59, § 1-46/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-129.1. Prolonged session of court of record; choosing and summoning prospective jurors.

On and after July 1, 2012, whenever the session of any court of record is prolonged beyond the week or period for which jurors were electronically selected at the close of the preceding term, or where the judge

anticipates that the same is about to be so prolonged, or where from any other cause the court has convened or is about to convene and there have been no jurors chosen for the same, the clerk, in the same manner prescribed for choosing prospective jurors at the close of the regular term, shall choose the names of prospective jurors and shall cause them to be summoned. (Code 1981, § 15-12-129.1, enacted by Ga. L. 2011, p. 59, § 1-49/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under Ga. L. 1873, p. 41, § 1; former Code 1882, § 3942; Penal Code 1895, §§ 866 and 871; Penal Code 1910, § 875; Code 1933, §§ 59-712 and 59-713; and former O.C.G.A. §§ 15-12-128 and 15-12-129 are included in the annotations for this Code section.

Ineligibility of juror serving in violation of this section is ground for challenge but not ground for new trial. Jordan v. State, 119 Ga. 443, 46 S.E. 679 (1904) (decided under former Penal Code 1895, § 866).

Judge had authority to draw jury at adjourned term if one was not drawn at close of regular term. Worley v. State, 21 Ga. App. 787, 95 S.E. 304 (1918) (decided under former Penal Code 1910, § 875).

City court judge may draw jury in presence of clerk and sheriff for prolonged term. Governor v. State, 5 Ga. App. 357, 63 S.E. 241 (1908) (decided under former Penal Code 1895, § 871).

Cited in Finnegan v. State, 57 Ga. 427 (1876) (decided under Ga. L. 1873, p. 41, § 1); Woolfolk v. State, 85 Ga. 69, 11 S.E. 814 (1890) (decided under former Code 1882, § 3942); Rawlings v. State, 163 Ga. 406, 136 S.E. 448 (1926) (decided under former Penal Code 1910, § 875); Harris v. State, 191 Ga. 243, 12 S.E.2d 64 (1940) (decided under former Code 1933, § 59-712); Harrison v. State, 120 Ga. App. 812, 172 S.E.2d 328 (1969) (decided under former Code 1933, § 59-713).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 123.

C.J.S. — 50A C.J.S., Juries, § 350.

ALR. — Time jury may or must be kept together upon disagreement in civil case, 164 ALR 1265.

15-12-130. When prospective jurors selected for service in superior courts may serve in other courts with concurrent jurisdiction.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-50/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1967, p. 747, §§ 1, 2; Ga. L. 2011, p. 59, § 1-50/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-130.1. Competence and qualifications of prospective jurors in superior court to serve in other courts of concurrent jurisdiction; applicability.

(a) On and after July 1, 2012, in any county of this state where there is located any court or courts having county-wide jurisdiction concurrent with the superior courts of this state to try any, all, or any type of case not within the exclusive jurisdiction of the superior courts of this state, any prospective trial juror chosen and summoned for service in the trial of civil and criminal cases in the superior court of such county shall be legally competent and qualified to serve as a prospective juror in any such other court or courts located in the county for the same period of time as he or she is competent and qualified to serve as a prospective trial juror in the superior court of the county.

(b) Subsection (a) of this Code section shall be applicable only if an order is entered by the judges of the affected courts identifying the courts in which prospective jurors may serve. (Code 1981, § 15-12-130.1, enacted by Ga. L. 2011, p. 59, § 1-51/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For annual survey article discussing developments in criminal law, see 51 Mercer L. Rev. 209 (1999).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former O.C.G.A. § 15-12-130 are included in the annotations for this Code section.

Jurors selected for service in state court. — Defendant demonstrated no harm resulting from the use of jurors who had been summoned for service in the state court and were seated for service in the superior court in defendant's case. State Farm Mut. Auto. Ins. Co. v. Yancey, 188 Ga. App. 8, 371 S.E.2d 883 (1988), aff'd, 258 Ga. 802, 375 S.E.2d 39 (1989), overruled on other grounds, Martin v. Williams, 263 Ga. 707, 438 S.E.2d 353 (1994) (decided under former O.C.G.A. § 15-12-130).

Lack of prosecution. — Jurors impaneled in county superior court were qualified to try the defendant in the state court of the county and, thus, the defendant was entitled to discharge and acquittal when defendant was not tried during the term in which defendant's demand for trial was made. Scott v. State, 206 Ga. App. 17, 424 S.E.2d 325 (1992) (decided under former O.C.G.A. § 15-12-130).

Speedy trial. — For purposes of a state court prosecution, a term in which superior court jurors were impaneled did not apply to a speedy trial determination since the jurors were not qualified to serve as state court jurors because the summons sent to the jurors referred only to the superior court. George v. State, 229 Ga. App. 632, 494 S.E.2d 526 (1998), aff'd, 269 Ga. 863, 505 S.E.2d 743 (1998) (decided under former O.C.G.A. § 15-12-130).

Demand for speedy trial is not effective during a term when jurors have been impaneled for superior court but not state court unless the requirements of subsection (b) of former O.C.G.A. § 15-12-130 were satisfied. George v. State, 269 Ga. 863, 505 S.E.2d 743 (1998) (decided under former O.C.G.A. § 15-12-130).

Because defendant failed to follow the

procedures of former O.C.G.A. § 15-12-130(b) by showing that jurors were impaneled and qualified to try defendant's case during the relevant time period after the defendant filed the speedy trial demand, the trial court did not err in denying the defendant's motion for discharge and acquittal. Cown v. State, 259 Ga. App. 8, 576 S.E.2d 20 (2002) (decided under former O.C.G.A. § 15-12-130).

Cited in Dean v. State, 177 Ga. App. 678, 340 S.E.2d 647 (1986) (decided under former O.C.G.A. § 15-12-130).

15-12-131. Examination of jurors in panels.

In the examination of individual jurors by counsel for the parties in civil and criminal cases, as provided in Code Section 15-12-164, applicable to felonies, and Code Section 15-12-133, applicable to all cases, it shall be the duty of the court, upon the request of either party, to place the jurors in the jury box in panels of 12 at a time, so as to facilitate their examination by counsel. (Code 1933, § 59-720, enacted by Ga. L. 1956, p. 64, § 1.)

Law reviews. — For annual survey of criminal law, see 38 Mercer L. Rev. 129 (1986). For article, "Voir Dire in the #LOL Society: Jury Selection Needs Drastic Updates to Remain Relevant in the Digital Age," see 47 J. Marshall L. Rev. 459 (2014).

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Purpose of O.C.G.A. § 15-12-131 is to facilitate the determination of the impartiality of jurors, their ability to treat the cause on the merits with objectivity and freedom from bias and prior inclination. Mathis v. State, 176 Ga. App. 362, 336 S.E.2d 299 (1985).

Section does not provide for judicial discretion. — Court's duty to place jurors in box is triggered upon request by either party that the court do so. Lett v. State, 160 Ga. App. 476, 287 S.E.2d 384 (1981).

Since O.C.G.A. § 15-12-131 does not provide for judicial discretion in the matter, the denial of defendant's request to voir dire prospective jurors in the jury box was in error. Mathis v. State, 176 Ga. App. 362, 336 S.E.2d 299 (1985).

Size of panels. — Oath is administered by panels of 12 and voir dire questions are propounded to panels of 12; defendant can question them in panels of 12 or individually but not en masse to the entire group of 48 jurors at one time. Lahr v. State, 239 Ga. 813, 238 S.E.2d 878 (1977).

Conducting the examination in panels of 12, each segregated from the others without being seated in the jury box seriatim, is not reversible error. Brown v. State, 218 Ga. App. 469, 462 S.E.2d 420 (1995).

Refusal to put jury in jury box. — Any harm caused by the judge's refusal to put the jury in the jury box upon request was cured by calling a recess and placing the jurors in the boxes along the sides of the courtroom. Raven v. State, 256 Ga. 366, 349 S.E.2d 383 (1986).

There was no error from the trial court seating jurors in panels of 12 in the jury box and on benches behind defense counsel's table. Jones v. State, 217 Ga. App. 722, 458 S.E.2d 894 (1995).

Cited in Reid v. State, 129 Ga. App. 657, 200 S.E.2d 454 (1973); Walls v. State, 161 Ga. App. 235, 291 S.E.2d 15 (1982); Ivester v. State, 252 Ga. 333, 313 S.E.2d 674 (1984); Perez v. State, 258 Ga. 343, 369 S.E.2d 256 (1988); Nichols v. State, 198 Ga. App. 323, 401 S.E.2d 338 (1991); Oliver v. State, 207 Ga. App. 681, 428 S.E.2d 681 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 108.

15-12-132. Oath of jury on voir dire.

Each panel, prior to commencing voir dire, shall take the following oath:

"You shall give true answers to all questions as may be asked by the court or its authority, including all questions asked by the parties or their attorneys, concerning your qualifications as jurors in the case of _____ (herein state the case). So help you God."

This oath shall be administered by the trial judge or the clerk. (Code 1933, § 59-704.1, enacted by Ga. L. 1979, p. 1048, § 1; Ga. L. 1982, p. 800, §§ 1, 2; Ga. L. 2011, p. 59, § 1-52/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For article surveying developments in Georgia criminal law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 95 (1981).

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Purpose. — This section was added so as to make mandatory the administration of an oath to jurors to compel the jurors to give a truthful answer to questions asked during the voir dire of all cases. Ates v. State, 155 Ga. App. 97, 270 S.E.2d 455 (1980).

Failure to adhere to procedure of this section is fatal error, but the record must reflect that this occurred. Whisenhunt v. State, 156 Ga. App. 583, 275 S.E.2d 82 (1980).

Oath to be administered before voir dire. — Use of the word "shall" in former Code 1933, §§ 59-704.1 and 59-709 (see now O.C.G.A. §§ 15-12-132 and 15-12-139) and the specification in the latter that the judge or clerk shall administer the oath to the jurors indicate that the legislature intended that the judge be required to administer the oath to the jurors prior to voir dire examination. Ates v. State, 155 Ga. App. 97, 270 S.E.2d 455 (1980).

Administration of oath by district attorney. — If the oath was administered to panels of jurors on voir dire by the district attorney rather than the trial judge in violation of this section, the case will be remanded for retrial, despite defendant's failure to show any harm as it is no answer to the violation of a mandatory rule to say that the record does not show any harm to have resulted. Ates v. State, 155 Ga. App. 97, 270 S.E.2d 455 (1980).

Permitting prosecuting arm of state to administer oath is presumptively prejudicial. Tyson v. State, 150 Ga. App. 569, 278 S.E.2d 150 (1981).

Defendant was not deprived of fair trial, prior to the effective date of the section, by prosecutor's swearing in jury. Godfrey v. Francis, 613 F. Supp. 747 (N.D. Ga. 1985), aff'd sub nom. Godfrey v. Kemp, 836 F.2d 1557 (11th Cir.), cert. dismissed, 487 U.S. 1264, 109 S. Ct. 27, 101 L. Ed. 2d 977 (1988), aff'd sub nom. Godfrey v. Kemp, 836 F.2d 1557 (11th Cir. 1988), cert. dismissed sub nom. Zant v. Godfrey, 487 U.S. 1264, 109 S. Ct. 27, 101 L. Ed. 2d 977 (1988).

Administration in defendant's absence. — Voir dire oath prescribed by

O.C.G.A. § 15-12-132 is not a stage of the trial, and is not a critical stage of the proceedings such as would require reversal based on the defendant's absence since no motion to have the oath administered to the prospective jurors was timely made. Gilreath v. State, 247 Ga. 814, 279 S.E.2d 650 (1981), cert. denied, 456 U.S. 984, 102 S. Ct. 2258, 72 L. Ed. 2d 862 (1982).

Defendant may forfeit defendant's right to voir dire conducted under oath by failing to timely assert that right. Gober v. State, 247 Ga. 652, 278 S.E.2d 386 (1981); Spivey v. State, 186 Ga. App. 236, 366 S.E.2d 838 (1988).

Defendant may forfeit the right to a voir dire conducted under oath by failing to timely assert that right and harm is not presumed from a failure to give the oath required under O.C.G.A. § 15-12-132. Defendant did not receive a new trial after defendant did not show that defendant could have challenged for cause a juror who had untruthfully answered a voir dire question had the juror answered the question truthfully. Taylor v. State, 264 Ga. App. 665, 592 S.E.2d 148 (2003).

Failure to give oath. — Absent any showing of actual prejudice, the Court of Appeals is not inclined to reverse a conviction because the voir dire was not conducted under oath since no objection was made below. Gober v. State, 247 Ga. 652, 278 S.E.2d 386 (1981).

Since the trial transcript was certified pursuant to O.C.G.A. § 15-14-5, the court must presume that the garbled version of the voir dire oath contained in the transcript truly, completely, and correctly represented the oath actually given by the trial court. However, even if the court presumes that trial counsel was ineffective for failing to object to the improper oath, the defendants failed to show that the defendants were prejudiced by such ineffectiveness. Hargett v. State, 285 Ga. 82, 674 S.E.2d 261 (2009).

Pledge of Allegiance. — The United States of America did not prejudice a non-citizen defendant nor indicate that the jurors were pro-state; rather, a juror's willingness to recite the Pledge of Allegiance, with its reinforcement of the concepts of "liberty and justice for all," showed no bias, either for the state, or for one who was charged by the state with a crime, and, in fact, was more likely to remind a juror of his or her obligations in the pursuit of justice. Robles v. State, 277 Ga. 415, 589 S.E.2d 566 (2003).

Waiver by failing to object in a timely manner. — Defendant waived the O.C.G.A. § 15-12-132 appellate issue by not timely objecting that the trial court had not given the required oath to the jurors before the voir dire questioning began. Hill v. State, 268 Ga. App. 642, 602 S.E.2d 348 (2004).

Driver waived the driver's objection to the trial court's failure to put prospective jurors under oath when pre-qualifying the jurors as to any prohibited relationship with an insured's automobile insurance carrier because the driver knew the prospective jurors were being pre-qualified as to their relationship with the insurance carrier prior to entering the courtroom, yet the driver made no inquiry into whether the jurors were under oath when the jurors were pre-qualified and made no timely objection to the pre-qualifying procedure. Sibley v. Dial, 315 Ga. App. 457, 723 S.E.2d 689 (2012).

Cited in Altman v. State, 156 Ga. App. 185, 273 S.E.2d 923 (1980); Hampton v. State, 158 Ga. App. 324, 280 S.E.2d 158 (1981); Aldridge v. State, 158 Ga. App. 719, 282 S.E.2d 189 (1981); Walls v. State, 161 Ga. App. 235, 291 S.E.2d 15 (1982); Godfrey v. Francis, 251 Ga. 652, 308 S.E.2d 806 (1983); Godfrey v. Francis, 613 F. Supp. 747 (N.D. Ga. 1985); Brooks v. Kemp, 762 F.2d 1383 (11th Cir. 1985); Foster v. State, 258 Ga. App. 601, 574 S.E.2d 843 (2002); Mathis v. State, No. A09A0215; No. A09A0308; No. A09A0358, 2009 Ga. App. LEXIS 586 (May 20, 2009); Fedd v. State, 298 Ga. App. 508, 680 S.E.2d 453 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 167.

C.J.S. — 50A C.J.S., Juries, § 477.

ALR. — Effect of juror's false or errone-

ous answer on voir dire in personal injury or death action as to previous claims or actions for damages by himself or his family, 38 ALR4th 267.

15-12-133. Right to individual examination of panel; matters of inquiry.

In all civil cases, the parties thereto shall have the right to an individual examination of the panel of prospective jurors from which the jury is to be selected, without interposing any challenge. In all criminal cases, both the state and the accused shall have the right to an individual examination of each prospective juror from which the jury is to be selected prior to interposing a challenge. The examination shall be conducted after the administration of a preliminary oath to the panel or in criminal cases after the usual voir dire questions have been put by the court. In the examination, the counsel for either party shall have the right to inquire of the individual prospective jurors examined touching any matter or thing which would illustrate any interest of the prospective juror in the case, including any opinion as to which party ought to prevail, the relationship or acquaintance of the prospective juror with the parties or counsel therefor, any fact or circumstance indicating any inclination, leaning, or bias which the prospective juror might have respecting the subject matter of the action or the counsel or parties thereto, and the religious, social, and fraternal connections of the prospective juror. (Ga. L. 1949, p. 1082, § 2; Ga. L. 1951, p. 214, § 2; Ga. L. 2011, p. 59, § 1-53/HB 415.)

Cross references. — Voir dire, Uniform Superior Court Rules, Rule 10.1.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For annual survey of criminal law, see 38 Mercer L. Rev. 129 (1986). For article, "Death Penalty Law," see 53 Mercer L. Rev. 233 (2001). For article, "Practitioner's Note Jury Selection: Whose Job Is It, Anyway?," see 23 Ga. St. U.L. Rev. 617 (2007). For annual survey on death penalty, see 65 Mercer L. Rev. 93 (2013). For article, "Voir Dire in the #LOL Society: Jury Selection Needs Drastic Updates to Remain Relevant in the Digital Age," see 47 J. Marshall L. Rev. 459 (2014).

For note, "Friends and Foes in the Jury Box: Walls v. Kim and the Mission to Stop Improper Juror Rehabilitation," see 53 Mercer L. Rev. 929 (2002).

For comment, "Batson v. Kentucky: Equal Protection, the Fair Cross-Section Requirement, and the Discriminatory Use of Peremptory Challenges," see 37 Emory L.J. 755 (1988).

JUDICIAL DECISIONS

Analysis

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MATTERS OF INQUIRY
1. IN GENERAL
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General Consideration

Purpose. — Intent of the General Assembly in enacting this section was to permit the parties in civil cases to examine the individual jurors making up the two panels before interposing their challenges. Keebler v. Willard, 90 Ga. App. 66, 81 S.E.2d 842 (1954).

Larger purpose of O.C.G.A. § 15-12-133 is to enable counsel to identify those prospective jurors counsel desires to remove from the panel by use of peremptory strikes as opposed to challenges for cause. Henderson v. State, 251 Ga. 398, 306 S.E.2d 645 (1983).

Purpose of voir dire. — Single purpose of voir dire is the ascertainment of the impartiality of jurors, their ability to treat the cause on the merits with objectivity, freedom from bias, and prior inclination. Freeman v. State, 132 Ga. App. 615, 208 S.E.2d 625 (1974); Thompson v. State, 154 Ga. App. 704, 269 S.E.2d 474 (1980); McKinney v. State, 155 Ga. App. 930, 273 S.E.2d 888 (1980), overruled on other grounds, 184 Ga. App. 607, 362 S.E.2d 65 (1987).

Voir dire should allow both parties an opportunity to ascertain the ability of the prospective jurors to decide the case on its merits with objectivity and freedom from bias and prior inclination. Waters v. State, 248 Ga. 355, 283 S.E.2d 238 (1981), cert. denied, 463 U.S. 1213, 103 S. Ct. 3551, 77 L. Ed. 2d 1398 (1983).

Extent of questioning during voir dire. — Georgia Supreme Court holds that the subject matter of the action as to which voir dire is permitted under O.C.G.A. § 15-12-133 extends beyond the crimes charged in the indictment and the sentences the charges carry to other critical facts of the case that experience, reason, and common sense indicate will be so influential for at least some prospective jurors that those jurors will be unable to consider all of the evidence in the case with three limitations: 1) the issue is not whether the prospective juror will consider a critical fact to be very important or worthy of great weight; 2) voir dire questions must be framed properly to reveal the prospective juror's general view on the critical fact and whether that view is so strong that it would substantially impair the juror in considering all three sentencing options; and 3) decisions as to what, if any, facts of a particular criminal case beyond the charges and sentencing options qualify as critical in terms of risking juror partiality can be difficult and context-specific. Ellington v. State, 292 Ga. 109, 735 S.E.2d 736 (2012).

Section applies to both misdemeanors and felonies. — This section is all-inclusive and applies to misdemeanor as well as felony cases. A denial of the right is an error requiring a reversal. Reid v. State, 129 Ga. App. 657, 200 S.E.2d 454 (1973).

Improper voir dire restricted. — Trial court did not violate Uniform Superior Court Rule 10.1, O.C.G.A. § 15-12-133, U.S. Const., amends. 6 and 14, or Ga. Const. 1983, Art. I, Sec. I, Paras. I and XI, by restricting improper voir dire examination of prospective jurors concerning racial bias, pretrial publicity, and self-defense. Walker v. State, 258 Ga. 443, 370 S.E.2d 149 (1988).

Burden on state to show deprivation of voir dire harmless. — If a defendant in a criminal case has been deprived of his or her rights to examine prospective jurors on voir dire, the burden is on the state to show that the error was harmless. The burden the state must meet is the "highly probable" test. This applies even though the defendant did not exhaust his or her peremptory strikes. Henderson v. State, 251 Ga. 398, 306 S.E.2d 645 (1983).

Reference in O.C.G.A. § 15-12-133 to "the usual voir dire questions put by the court" is to O.C.G.A. § 15-12-164 insofar as felony trials are concerned and this latter section establishes the test for disqualification for favor. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981).

To disqualify juror who tried case and swore that the juror had not formed an expressed opinion, and had no bias or prejudice, there should be affidavits of at least two witnesses, or what is equivalent thereto, against such oath of the juror; otherwise it is but oath against oath, and the verdict will not be set aside on the ground of the incompetency of the juror. Williams v. State, 180 Ga. 595, 180 S.E. 101 (1935).

Failure to qualify alternate who did not serve on jury harmless. — If venireperson's name was not called before the 12 venirepersons who tried the case were selected and no alternate actually sat on the jury, any error in qualifying the person as a prospective juror was harmless. Wilcox v. State, 250 Ga. 745, 301 S.E.2d 251 (1983), cert. denied, 484 U.S. 925, 108 S. Ct. 287, 98 L. Ed. 2d 247 (1987).

Standard for new trial for juror offense. — New trials will not be granted unless the movant can demonstrate that a juror failed to answer, or to answer honestly, a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause. Gainesville Radiology Group v. Hummel, 263 Ga. 91, 428 S.E.2d 786 (1993).

Cited in Cade v. State, 207 Ga. 135, 60 S.E.2d 763 (1950); Adler v. Adler, 207 Ga. 394, 61 S.E.2d 824 (1950); Dyer v. State, 86 Ga. App. 835, 72 S.E.2d 781 (1952); Bland v. State, 210 Ga. 100, 78 S.E.2d 51 (1953); Stevens v. Wright Contracting Co., 92 Ga. App. 373, 88 S.E.2d 511 (1955); Hooks v. State, 215 Ga. 869, 114 S.E.2d 6 (1960); Whaley v. Sim Grady Mach. Co., 107 Ga. App. 96, 129 S.E.2d 362 (1962); Britten v. State, 221 Ga. 97, 143 S.E.2d 176 (1965); Roach v. State, 221 Ga. 783, 147 S.E.2d 299 (1966); Harris v. State, 120 Ga. App. 359, 170 S.E.2d 743 (1969); Hart v. State, 227 Ga. 171, 179 S.E.2d 346 (1971); Mitchell v. City of Newnan, 125 Ga. App. 761, 188 S.E.2d 917 (1972); Hodges v. Carpenter, 127 Ga. App. 358, 193 S.E.2d 199 (1972); Durham v. State, 129 Ga. App. 5, 198 S.E.2d 387 (1973); Shouse v. State, 231 Ga. 716, 203 S.E.2d 537 (1974); Hinson v. DOT, 135 Ga. App. 258, 217 S.E.2d 606 (1975); Hall v. State, 135 Ga. App. 690, 218 S.E.2d 687 (1975); Akin v. Patton, 235 Ga. 51, 218 S.E.2d 802 (1975); Head v. State, 235 Ga. 677, 221 S.E.2d 435 (1975); Holloway v. State, 137 Ga. App. 124, 222 S.E.2d 898 (1975); Johnson v. Jackson, 140 Ga. App. 252, 230 S.E.2d 756 (1976); Robinson v. State, 238 Ga. 291, 232 S.E.2d 561 (1977); Mitchell v. State, 239 Ga. 456, 238 S.E.2d 100 (1977); Lamb v. State, 241 Ga. 10, 243 S.E.2d 59 (1978); Firestone Tire & Rubber Co. v. King, 145 Ga. App. 840, 244 S.E.2d 905 (1978); Smith v. State, 148 Ga. App. 1, 251 S.E.2d 13 (1978); Gilreath v. State, 247 Ga. 814, 279 S.E.2d 650 (1981); Wallace v. State, 248 Ga. 255, 282 S.E.2d 325 (1981); Hughes v. State, 161 Ga. App. 824, 288 S.E.2d 916 (1982); Tucker v. State, 249 Ga. 323, 290 S.E.2d 97 (1982); Georgia Power Co. v. Bishop, 162 Ga. App. 122, 290 S.E.2d 328 (1982); Mathis v. State, 249 Ga. 454, 291 S.E.2d 489 (1982); Page v. State, 249 Ga. 648, 292 S.E.2d 850 (1982); Goins v. State, 164 Ga. App. 37, 296 S.E.2d 229 (1982); Dunn v. State, 251 Ga. 731, 309 S.E.2d 370 (1983); Deering v. State, 168 Ga. App. 835, 310 S.E.2d 720 (1983); Whittington v. State, 252 Ga. 168, 313 S.E.2d 73 (1984); Ivester v. State, 252 Ga. 333, 313 S.E.2d 674 (1984); McCulligh v. State, 169 Ga. App. 717, 314 S.E.2d 724 (1984); Anderson v. State, 169 Ga. App. 729, 314 S.E.2d 735 (1984); Carter v. State, 252 Ga. 502, 315 S.E.2d 646 (1984); Thomas v. State, 171 Ga. App. 306, 319 S.E.2d 511 (1984); Battle v. Strother, 171 Ga. App. 418, 319 S.E.2d 887 (1984); Fugitt v. State, 254 Ga. 521, 330 S.E.2d 714 (1985); Thurmond v. Board of Comm'rs, 174 Ga. App. 570, 330 S.E.2d 787 (1985); Amerson v. State, 177 Ga. App. 97, 338 S.E.2d 528 (1985); Shadix v. State, 179 Ga. App. 644, 347 S.E.2d 298 (1986); Chancey v. State, 256 Ga. 415, 349 S.E.2d 717 (1986); McGraw v. State, 199 Ga. App. 389, 405 S.E.2d 53 (1991); Lawhorn v. State, 200 Ga. App. 451, 408 S.E.2d 425 (1991); Taylor v. State, 202 Ga. App. 445, 414 S.E.2d 687 (1992); Gilbert v. State, 262 Ga. 840, 426 S.E.2d 155 (1993); Harper v. State, 222 Ga. App. 393, 474 S.E.2d 288 (1996); Hamilton v. State, 274 Ga. 582, 555 S.E.2d 701 (2001); Robles v. State, 277 Ga. 415, 589 S.E.2d 566 (2003); Ford Motor Co. v. Conley, 294 Ga. 530, 757 S.E.2d 20 (2014).

Right to Examination

Defense counsel has right to examine jurors individually. — Defendant has a right, after the usual voir dire questions have been put to the jury by the court, to individually question all jurors on the entire panel prior to interposing a challenge to any of the jurors. Gunnin v. State, 112 Ga. App. 720, 146 S.E.2d 131 (1965).

Right does not encompass isolated examination. The single purpose for voir dire is the ascertainment of the impartiality of jurors, their ability to treat the cause on the merits with objectivity and freedom from bias and prior inclination and the control of the pursuit of such determination is within the sound legal discretion of the trial court, and only in the event of manifest abuse will it be upset upon review. Whitlock v. State, 230 Ga. 700, 198 S.E.2d 865 (1973); Arnold v. State, 236 Ga. 534, 224 S.E.2d 386 (1976); Claxton Poultry Co. v. City of Claxton, 155 Ga. App. 308, 271 S.E.2d 227 (1980); Messer v. State, 247 Ga. 316, 276 S.E.2d 15, cert. denied, 454 U.S. 882, 102 S. Ct. 367, 70 L. Ed. 2d 193 (1981).

Defendant in a criminal case has an absolute right to an individual examination of each juror. Cowan v. State, 156 Ga. App. 650, 275 S.E.2d 665 (1980).

Right is not subject to judge's discretion. — Language does not leave matter to discretion of the trial judge, but states that the defendant "shall" have the right to an individual examination of each juror prior to interposing a challenge. Blount v. State, 214 Ga. 433, 105 S.E.2d 304 (1958); Edwards v. State, 214 Ga. 436, 105 S.E.2d 307 (1958); Ferguson v. State, 218 Ga. 173, 126 S.E.2d 798 (1962).

It is not within the discretion of the court to deny the right of an individual examination of each juror prior to the interposing of a challenge, nor any other right of examination given by this section. Whaley v. Sim Grady Mach. Co., 218 Ga. 838, 131 S.E.2d 181 (1963).

This section does not leave to the discretion of the judge whether the defendant shall have the right to an individual examination of all the jurors before making a challenge to any of the jurors, but it is mandatory. Ladd v. State, 228 Ga. 113, 184 S.E.2d 158 (1971).

Either party in civil suit has right to examination of jurors individually prior to interposing a challenge. Hill v. Crowell, 152 Ga. App. 698, 264 S.E.2d 25 (1979).

Denial of right is reversible error. Denial by the trial judge of the right given is reversible error. Anthony v. State, 112 Ga. App. 444, 145 S.E.2d 657 (1965).

If the defendant asserts a right to examine all jurors before striking any of the jurors, it is reversible error for the trial court to deny the defendant that right. Thomas v. State, 247 Ga. 7, 273 S.E.2d 396 (1981).

Denial of right presumed harmful. — If a party in a civil case has been denied the right to an examination of jurors individually, error is presumed to be harmful. Hill v. Crowell, 244 Ga. 294, 260 S.E.2d 18 (1979).

No prejudice need be shown. — Denial of defendant's right to individual voir dire required reversal without specific showing of prejudice. Wallace v. State, 164 Ga. App. 642, 298 S.E.2d 627 (1982).

Showing required to excuse denial of right. — If the defendant was not allowed to question jurors regarding their relationship to, or knowledge of, the prosecuting attorneys, the state was required to show that it was "highly probable" that the limitation of voir dire did not contribute to the verdict. Hunt v. State, 215 Ga. App. 677, 451 S.E.2d 797 (1994).

No right to further examine disqualified juror. — If a juror's answers to questions concerning conscientious objection to the death penalty clearly disqualify the juror, the defendant is not entitled to further questioning as a matter of right, although the trial court may allow additional questioning. Roberts v. State, 252 Ga. 227, 314 S.E.2d 83, cert. denied, 469 U.S. 873, 105 S. Ct. 228, 83 L. Ed. 2d 157 (1984).

Isolated examination. — Right to individual examination of jurors does not encompass isolated examination, whether or not individual questioning of the jurors is to take place outside of the presence of the other jurors is one of those matters lying within the sound discretion of the trial court. Stevens v. State, 247 Ga. 698,

278 S.E.2d 398 (1981), cert. denied, 463 U.S. 1213, 103 S. Ct. 3551, 77 L. Ed. 2d 1398 (1983).

Right to individual examination of jurors does not encompass isolated examination. There is no abuse of discretion if counsel has ample opportunity to thoroughly question each juror. Simmons v. State, 168 Ga. App. 1, 308 S.E.2d 27 (1983).

Granting or denying isolated examination is within discretion of court. Thomas v. State, 247 Ga. 7, 273 S.E.2d 396 (1981).

Discretion of court to conduct individual examination. — There is no absolute right to have each juror examined outside the presence of the others, but such a request addresses itself to the discretion of the trial judge. Parham v. State, 135 Ga. App. 315, 217 S.E.2d 493 (1975).

While this section gives defense counsel the right to examine jurors individually after the usual voir dire questions have been put by the trial court to the jury as a panel, the right does not encompass isolated examination and such a request is entirely within the discretion of the trial judge. Carter v. State, 137 Ga. App. 824, 225 S.E.2d 73 (1976).

Whether or not individual questioning of jurors is to take place outside of the presence of the other jurors is a matter lying within the sound discretion of the trial court. Finney v. State, 242 Ga. 582, 250 S.E.2d 388 (1978), cert. denied, 441 U.S. 916, 99 S. Ct. 2017, 60 L. Ed. 2d 388 (1979).

There is no right to sequestration during voir dire. Claxton Poultry Co. v. City of Claxton, 155 Ga. App. 308, 271 S.E.2d 227 (1980).

Providing individual voir dire does not require mandatory sequestered voir dire. Stinson v. State, 244 Ga. 219, 259 S.E.2d 471 (1979).

Sequestered voir dire is not mandated by O.C.G.A. § 15-12-133, which provides for individual examination of jurors; the granting of sequestered voir dire is within the discretion of the court, and a showing of prejudice from denial is necessary to show an abuse of discretion. Sanborn v. State, 251 Ga. 169, 304 S.E.2d 377 (1983); Bailey v. State, 209 Ga. App. 390, 433 S.E.2d 610 (1993), overruled on other grounds, Walker v. State, 290 Ga. 696, 723 S.E.2d 894 (2012).

Right of defense counsel to examine jurors individually does not encompass isolated examination; an appellate court reviewed the jurors' general responses to defense counsel's proper questions regarding race as it related to the ability to be fair and impartial in the trial of a rape and sodomy case, and found that defendant did not show any prejudice resulting from the trial court's denial of defendant's motion to sequester potential jurors during individual voir dire. Fox v. State, 266 Ga. App. 307, 596 S.E.2d 773 (2004).

Although O.C.G.A. § 15-12-133 granted the defendant the right to an individual response from each prospective juror, the statute did not mandate sequestered voir dire. Accordingly, the trial court did not abuse the court's discretion in putting in place a procedure that allowed some questioning in a confidential manner, but did not completely sequester voir dire. Kerdpoka v. State, 314 Ga. App. 400, 724 S.E.2d 419 (2012), cert. denied, No. S12C1112, 2012 Ga. LEXIS 603 (Ga. 2012).

Limits placed on voir dire did not violate defendant's rights. — Trial court did not violate O.C.G.A. § 15-12-133 or defendant's due process and equal protection rights under the U.S. Constitution by placing limitations on voir dire because defendant was given wide latitude during voir dire in asking questions related to race and the trial court specifically asked the jurors whether the jurors harbored any racial bias. Alexander v. State, 276 Ga. App. 288, 623 S.E.2d 160 (2005).

Time of examination a matter of discretion. — Whether the examination of the individual juror by the defendant shall be made before or after the juror has been placed upon by the state is a matter within the discretion of the trial judge. Starr v. State, 209 Ga. 258, 71 S.E.2d 654 (1952).

Since this section contains no requirement as to when such examination shall be made, such is within the discretion of the trial court. Whaley v. Sim Grady Mach. Co., 218 Ga. 838, 131 S.E.2d 181 (1963).

Right to Examination (Cont'd)

Waiver of right to individual examination. — Right to individual examination of each juror may be waived by failure to exercise the right. Reid v. State, 129 Ga. App. 657, 200 S.E.2d 454 (1973).

By failing to object or claim right to examine every prospective juror before challenging any, a defendant waives the right to do so. Moore v. State, 153 Ga. App. 511, 265 S.E.2d 821 (1980).

Conduct of Examination

Control of examination within discretion of trial court. — Limitation to be placed upon counsel in their questioning of the jury on their voir dire lies largely within the sound discretion of the trial court, and the appellate courts should not interfere with the exercise of that discretion unless it is shown to have been manifestly abused. White v. State, 230 Ga. 327, 196 S.E.2d 849, appeal dismissed, 414 U.S. 886, 94 S. Ct. 222, 38 L. Ed. 2d 134 (1973).

Single purpose for voir dire is the ascertainment of the impartiality of jurors, their ability to treat the cause on the merits with objectivity and freedom from bias and prior inclination. The control of the pursuit of such determination is within the sound legal discretion of the trial court, and only in the event of manifest abuse will it be upset upon review. Frazier v. State, 138 Ga. App. 640, 227 S.E.2d 284 (1976); Legare v. State, 243 Ga. 744, 257 S.E.2d 247 (1979); Thompson v. State, 254 Ga. App. 704, 269 S.E.2d 474 (1980); Claxton Poultry Co. v. City of Claxton, 155 Ga. App. 308, 271 S.E.2d 227 (1980); Messer v. State, 247 Ga. 316, 276 S.E.2d 15, cert. denied, 454 U.S. 882, 102 S. Ct. 367, 70 L. Ed. 2d 193 (1981).

Conduct of voir dire is within the discretion of the trial judge, and the judge's rulings are proper absent some manifest abuse of the judge's discretion. Gatlin v. State, 236 Ga. 707, 225 S.E.2d 224 (1976).

Trial court did not err in refusing to allow defendant additional voir dire of all jurors after one juror stated that the juror was "slightly intimidated" by a tattoo on defendant's forehead as other jurors were asked about the tattoo after the one juror's comment and those jurors did not have any issue with the tattoo, other questions during voir dire of the entire panel were similar to that issue, and the trial court's decision was within the court's discretion. Andrews v. State, 275 Ga. App. 426, 620 S.E.2d 629 (2005).

Identity of propounder of voir dire questions. — Trial court may exercise discretion concerning the identity of the propounder of voir dire questions and whether those questions are posed to the jury panel en masse, to each panel of twelve, or to each juror individually. Therefore, the trial court's decision to have counsel pose their general voir dire questions to the panel as a whole was not an abuse of discretion, especially since the general questioning was followed by the opportunity to inquire further of each individual juror. Hammond v. State, 273 Ga. 442, 542 S.E.2d 498 (2001).

Requiring immediate acceptance or rejection of juror error. — When, in a civil case the trial court required counsel, after counsel had propounded various questions to each juror as each juror stood, to accept or reject the juror before the juror sat down, such action on the part of the trial court denied the plaintiff a substantial right given plaintiff by statute and rendered all further proceedings in the case nugatory. Keebler v. Willard, 90 Ga. App. 66, 81 S.E.2d 842 (1954).

Trial judge has no discretion to name arbitrary number of questions that will be permitted during voir dire. Lane v. State, 126 Ga. App. 375, 190 S.E.2d 576 (1972).

Trial court has discretion to determine whether a question is permissible under O.C.G.A. § 15-12-133. Ridgeway v. State, 174 Ga. App. 663, 330 S.E.2d 916 (1985).

Participation by trial judge. — Absent some abuse of discretion, participation by the trial judge in the voir dire examination of prospective jurors provides no basis for reversal. Curry v. State, 255 Ga. 215, 336 S.E.2d 762 (1985), cert. denied, 475 U.S. 1090, 106 S. Ct. 1480, 89 L. Ed. 2d 734 (1986).

Court may delegate authority to ask statutory questions. — Ga. L. 1951, p. 214, § 2 (see now O.C.G.A.

§ 15-12-133) recognized the court's ultimate responsibility for seeing that the statutory questions of former Code 1933, §§ 59-806 and 59-807 (see now O.C.G.A. § 15-12-164) were put to the jurors but the court may delegate this responsibility to the court's officers including the prosecuting attorney. Hicks v. State, 232 Ga. 393, 207 S.E.2d 30 (1974).

Jurors required to listen to questions and give truthful answers. — Juror has a duty to truthfully answer any question posed to the juror on voir dire and a concomitant duty to be attentive to the questions and to speak up when the juror does not understand a question. Falsetta v. State, 158 Ga. App. 392, 280 S.E.2d 411 (1981).

Counsel entitled to truthful answers. — Jury trials must be kept free from suspicion of irregularity or impropriety of conduct, and counsel are entitled to have truthful answers given to questions which counsel are permitted by the trial court to propound to the individual jurors. Pierce v. Altman, 147 Ga. App. 22, 248 S.E.2d 34 (1978).

Juror must answer questions. — Juror was under obligation to reveal, in response to counsel's question, that the juror expected plaintiff's counsel to take action in the juror's behalf on a matter which the juror had previously discussed with counsel and it was error to refuse to grant the defendant's motion for mistrial based on the juror's failure to reveal such information upon questioning. First of Ga. Ins. Co. v. Worthington, 165 Ga. App. 303, 299 S.E.2d 567 (1983).

Right to individual response, not to individual question. — Trial court may exercise discretion as to whether a party, or the court itself, shall propound the questions, and may require that questions be asked once only to the full array of the jurors, rather than to every juror — one at a time — provided, of course, that the question be framed and the response given in a manner that will provide the propounder with an individual response prior to the interposition of challenge. State v. Hutter, 251 Ga. 615, 307 S.E.2d 910 (1983).

Written questions disallowed. — Trial court did not err in denying defendant's motion to use a written questionnaire to discern whether any potential jurors (or their family members or close friends) had been sexually molested as a child. Allen v. State, 239 Ga. App. 899, 522 S.E.2d 502 (1999).

Juror's failure to respond not prejudicial. — Plaintiff failed to make the requisite showing of bias or prejudice resulting from the juror's failure to respond to voir dire questions about opposition to personal injury suits since the record demonstrated that although the juror was personally opposed to filing lawsuits, the juror had no bias against any person who brought suit. McCann v. Kelley, 209 Ga. App. 179, 433 S.E.2d 130 (1993).

Juror's failure to respond affirmatively to defense counsel's question as to whether any juror knew anyone who worked for the district attorney's office did not inject harmful error into the trial even though the juror knew an attorney in that office; the juror knew the attorney but did not know the attorney was a member of the district attorney's office. Royal v. State, 266 Ga. 165, 465 S.E.2d 662 (1996).

Prejudice from abuse of discretion must be shown. — If error is committed by court by abuse of discretion it must further be shown that prejudice resulted, either in the defendant being in some way injured or in some advantage accruing to the state. Griffeth v. State, 154 Ga. App. 643, 269 S.E.2d 501 (1980).

Error must be objected to. — To raise issue as to error in conducting of voir dire, objection must be made in trial court to preserve issue for appeal. State v. Graham, 246 Ga. 341, 271 S.E.2d 627 (1980).

Exceptions must be properly preserved. — When exceptions to the refusal of a trial judge to permit an examination of prospective jurors were not preserved in the manner provided by law, no constitutional question could be presented for determination on appeal. Key v. State, 207 Ga. 552, 63 S.E.2d 356 (1951).

Erroneous procedure in striking jurors. — Procedure utilized to strike the jury, striking jurors from each panel of 12, rather than comparing all the jurors at once, was in error and required the grant of a new trial. Peters v. State, 261 Ga. 373, 405 S.E.2d 255 (1991).

Conduct of Examination (Cont'd)

Exhaustion of peremptory strikes. — If the defendant in a felony trial has to exhaust defendant's peremptory strikes to excuse a juror who should have been excused for cause, the error is harmful. Grant v. State, 160 Ga. App. 837, 287 S.E.2d 681 (1982).

Matters of Inquiry

1. In General

This section gives counsel great latitude in individually examining prospective jurors. Haston v. Hightower, 111 Ga. App. 87, 140 S.E.2d 525 (1965).

Broad latitude. — By the terms of this section, counsel in a given case are allowed, before making any challenge, to examine each member of the panel touching any matter or thing which would illustrate any interest of the juror in the cause, including any opinion as to which party ought to prevail, and the relationship or acquaintance of the juror with the parties. Upon challenge, it is the duty of the court to hear such competent evidence respecting the challenge as shall be submitted by either party. Jennings v. Autry, 94 Ga. App. 344, 94 S.E.2d 629 (1956).

This section permits counsel the broadest of latitude in questioning the jury as to any matter or circumstance indicating any inclination, leaning, or bias which the jurors might have respecting the subject matter of the suit, or counsel, or parties thereto. White v. State, 230 Ga. 327, 196 S.E.2d 849, appeal dismissed, 414 U.S. 886, 94 S. Ct. 222, 38 L. Ed. 2d 134 (1973).

Party is given the right to inquire into any fact or circumstance indicating any inclination, leaning, or bias which the juror might have respecting the subject matter of the suit. Falsetta v. State, 158 Ga. App. 392, 280 S.E.2d 411 (1981).

Defendant has right to ask questions included in section. — If the questions appellant desired to propound to each prospective juror on voir dire examination are included specifically in this section, a defendant has an absolute right to propound such questions to the jurors. Hence, it is reversible error for the trial court to refuse permission to counsel to ask such questions. Cowan v. State, 156 Ga. App. 650, 275 S.E.2d 665 (1980).

Although control of voir dire examination is normally within the discretion of the trial court, the defendant in a criminal case has an absolute right to have the defendant's prospective jurors questioned as to those matters specified in O.C.G.A. § 15-12-133. Mitchell v. State, 176 Ga. App. 32, 335 S.E.2d 150 (1985).

Court may require counsel to limit interrogation to matters dealing directly with specific case to be tried. Reid v. State, 129 Ga. App. 657, 200 S.E.2d 454 (1973).

Although examination of prospective jurors by counsel is very broad under O.C.G.A. § 15-12-133, the trial judge still retains the discretion to limit the examination to questions dealing directly with the specific case and to prohibit general questions. Jenkins v. State, 157 Ga. App. 310, 277 S.E.2d 304 (1981).

Specific questions covered by general question not barred. — Question seeking to elicit, from an individual juror on the juror's voir dire, specific facts or circumstances which are clearly within the purview of O.C.G.A. § 15-12-133 should not be proscribed simply because more general questions dealing with the same subject matter have been previously addressed to the entire panel of prospective jurors. Craig v. State, 165 Ga. App. 156, 299 S.E.2d 745 (1983).

Questions should illustrate prejudice or interest. — Right to examine each juror individually after the usual voir dire questions have been put by the court is a broad right. But, this right is not unlimited, and such examination in its broadest scope should not go beyond matters which would illustrate any interest of the juror in the cause. Curtis v. State, 224 Ga. 870, 165 S.E.2d 150 (1968).

Counsel should confine counsel's questions to those which may illustrate any prejudice of the juror against the accused or any interest of the juror in the cause. Freeman v. State, 132 Ga. App. 615, 208 S.E.2d 625 (1974).

Discretion of trial judge to limit examination. — Court has wide discretion in permitting interrogation of the jurors. Leggett v. Brewton, 104 Ga. App. 580, 122 S.E.2d 469 (1961).

While this Code section permits an individual examination of each juror, there must be some limitation upon its extent, so the examination is conducted under the supervision and direction of the trial court, and what questions may or may not be asked are left largely to the sound discretion of the court, the exercise of which will not be interfered with by an appellate court unless clearly abused. Whaley v. Sim Grady Mach. Co., 218 Ga. 838, 131 S.E.2d 181 (1963).

Language of this Code section is broad, but the trial judge still retains the discretion to limit the examination to questions dealing directly with the specific case and to prohibit general questions. Hill v. State, 221 Ga. 65, 142 S.E.2d 909 (1965); Curtis v. State, 224 Ga. 870, 165 S.E.2d 150 (1968); Thacker v. State, 226 Ga. 170, 173 S.E.2d 186 (1970), vacated on other grounds, 408 U.S. 936, 92 S. Ct. 2861, 33 L. Ed. 2d 753 (1972); McNeal v. State, 228 Ga. 633, 187 S.E.2d 271 (1972); King v. State, 230 Ga. 581, 198 S.E.2d 305 (1973); Merrill v. State, 130 Ga. App. 745, 204 S.E.2d 632 (1974); Freeman v. State, 132 Ga. App. 615, 208 S.E.2d 625 (1974); McGinnis v. State, 135 Ga. App. 843, 219 S.E.2d 485 (1975); Frazier v. State, 138 Ga. App. 640, 227 S.E.2d 284 (1976); Griffeth v. State, 154 Ga. App. 643, 269 S.E.2d 501 (1980); Chastain v. State, 255 Ga. 723, 342 S.E.2d 678 (1986); Starks v. Robinson, 189 Ga. App. 168, 375 S.E.2d 86 (1988); Ross v. State, 194 Ga. App. 285, 390 S.E.2d 429 (1990).

Questions which may be propounded to prospective jurors under the provisions of this section are largely within the discretion of the court, and only if that discretion is abused will the appellate court interfere. Evans v. State, 222 Ga. 392, 150 S.E.2d 240, cert. denied, 385 U.S. 953, 87 S. Ct. 336, 17 L. Ed. 2d 231 (1966).

Trial court has the discretion to limit the examination of jurors to questions which are phrased or designed so as to elicit or reveal any actual bias or prejudice against the defendants or any interest in the cause and to prohibit general questions. Bennett v. State, 153 Ga. App. 21, 264 S.E.2d 516 (1980).

Trial court did not abuse the court's discretion after the court refused to allow the defense to ask, during voir dire, what prospective jurors would think of a failure of the defendant to testify. Anderson v. State, 161 Ga. App. 816, 289 S.E.2d 22 (1982).

Control of voir dire examination is within the sound legal discretion of the trial court, and the appellate courts should not interfere unless it is shown to have been manifestly abused. Lawton v. State, 191 Ga. App. 116, 381 S.E.2d 106 (1989).

Trial court did not abuse its discretion to restrict the scope of voir dire in the limited manner it did because although defense counsel was prohibited from questioning panel members about a specific method of corporal punishment with a belt, the trial court did not preclude questioning about the entire subject matter and defense counsel was permitted to inquire of specific members whether allegations of corporal punishment of a child would affect their ability to be fair and impartial. Alexander v. State, 294 Ga. 345, 751 S.E.2d 408 (2013).

Discretion in distinguishing proper and improper questions. — Since the distinction between questions which ask jurors how the jurors would decide issues of a case if and when such issues are presented and questions which merely inquire whether jurors can start the case without bias or prior inclination is not always crystal clear, the control of the voir dire examination is vested in the sound legal discretion of the trial judge and will not be interfered with by this court unless the record clearly shows an abuse of that discretion. Waters v. State, 248 Ga. 355, 283 S.E.2d 238 (1981), cert. denied, 463 U.S. 1213, 103 S. Ct. 3551, 75 L. Ed. 2d 1398 (1983); Wilcox v. State, 250 Ga. 745, 301 S.E.2d 251 (1983), cert. denied, 484 U.S. 925, 108 S. Ct. 287, 98 L. Ed. 2d 247 (1987).

This section does not permit inquiry as to every matter and every thing. The court has wide discretion in permitting interrogation of the jurors. Bethay v. State, 235 Ga. 371, 219 S.E.2d 743 (1975).

Questions requiring impartiality. — If a contested juror was an assistant district attorney's parent, the juror's initial

Matters of Inquiry (Cont'd)
1. In General (Cont'd)

doubt as to impartiality did not demand that the juror be removed in the absence of a defense motion. Shiver v. State, 276 Ga. 624, 581 S.E.2d 254, cert. denied, 540 U.S. 1007, 124 S. Ct. 538, 157 L. Ed. 2d 414 (2003).

Questions requiring prejudgment of case. — Considerable latitude may be allowed counsel in questioning jurors; however, the trial judge has authority to prohibit the jurors being asked such questions as would require the jurors in effect to prejudge the case. Bowens v. State, 116 Ga. App. 577, 158 S.E.2d 420 (1967).

No question should require a response from a juror which might amount to prejudgment of the case. Waters v. State, 248 Ga. 355, 283 S.E.2d 238 (1981), cert. denied, 463 U.S. 1213, 103 S. Ct. 3551, 75 L. Ed. 2d 1398 (1983); Wilcox v. State, 250 Ga. 745, 301 S.E.2d 251 (1983), cert. denied, 484 U.S. 925, 108 S. Ct. 287, 98 L. Ed. 2d 247 (1987).

Parties are entitled on voir dire to ascertain whether prospective jurors have formed an opinion as to the guilt or innocence of the accused. However, the parties are not entitled to ask jurors to prejudge the case. Lee v. State, 258 Ga. 762, 374 S.E.2d 199 (1988), cert. denied, 490 U.S. 1075, 109 S. Ct. 2089, 104 L. Ed. 2d 652 (1989).

Trial court abused the court's discretion by prohibiting defense counsel from asking prospective jurors whether the jurors had strong feelings about child molestation, and if those feelings would impair the jurors' judgment or make it difficult for the jurors to judge the case; but, this error was harmless given the overwhelming evidence of defendant's guilt regarding the numerous acts of sodomy that the defendant engaged in with the daughter, the scientific evidence which linked the defendant's DNA to the semen found in the victim's mouth, and the defendant's attempt to allude the authorities until the defendant was apprehended in Tennessee. Meeks v. State, 269 Ga. App. 836, 605 S.E.2d 428 (2004).

In a child abuse case in which the defense counsel asked the panel of potential jurors whether the nature of the case would have made it difficult for anyone to serve on the jury and the trial court sustained the state's objection on the ground that the defense counsel impermissibly asked potential jurors to prejudge the case in violation of O.C.G.A. § 15-12-133, defendant was not prejudiced by any error, as the state asked a similar question under O.C.G.A. § 15-12-164(a)(2), and potential jurors were asked whether they had children or grandchildren, had foster children or operated a daycare center, or had received special training with respect to caring for children. Withrow v. State, 275 Ga. App. 110, 619 S.E.2d 714 (2005).

Even if a question posed by the defense counsel did not seek a prejudgment of the case, the question's exclusion was not reversible error, pursuant to O.C.G.A. § 15-12-133, as the substance of the excluded question was covered by other questions asked to potential jurors; further, it was highly probable that the limitation upon voir dire did not contribute to the verdict and that no harm occurred to the defendant. McKee v. State, 275 Ga. App. 646, 621 S.E.2d 611 (2005).

Long, confusing, argumentative, general, and hypothetical questions. — Judge may prohibit questions that are long and confusing or unduly argumentative, or general and hypothetical. Gatlin v. State, 236 Ga. 707, 225 S.E.2d 224 (1976).

Confusing and overly broad question which appeared to ask an opinion as to a matter of law was properly refused. McCoy v. State, 231 Ga. App. 703, 500 S.E.2d 611 (1998).

Opinion of evidence. — Neither the defendant nor the state has the right simply to outline the evidence and then ask a prospective juror the juror's opinion of that evidence, nor is it permissible to ask a juror to describe the kind of case that, in the juror's opinion, would warrant a death sentence. Blankenship v. State, 258 Ga. 43, 365 S.E.2d 265 (1988), cert. denied, 488 U.S. 871, 109 S. Ct. 183, 102 L. Ed. 2d 152 (1988).

There was no abuse of discretion in the trial court's refusal to allow defendant to question the prospective jurors regarding the jurors' opinions as to the evidence that the trial court had ruled to be admissible

at trial. Shields v. State, 202 Ga. App. 659, 415 S.E.2d 478 (1992).

Hypothetical questions assuming certain facts will be proven. — Hypothetical voir dire questions are not per se improper, but a trial judge should be cautious in allowing counsel to propound questions which ask the juror to assume that certain facts will be proven. Such questions tend to improperly influence jurors. Waters v. State, 248 Ga. 355, 283 S.E.2d 238 (1981), cert. denied, 463 U.S. 1213, 103 S. Ct. 3551, 77 L. Ed. 2d 1398 (1983).

Hypothetical questions involving evidence should be excluded. — While the questions which may be propounded to prospective jurors are largely within the discretion of the court, and may include any matter or thing which would illustrate any interest of the juror in the cause, or any fact or circumstance indicating any inclination, leaning, or bias, which the juror may have respecting the subject matter of the suit, nevertheless hypothetical questions involving evidence should be excluded, and no question should be so framed as to require a response from the juror which might amount to a prejudgment of the case. Gunnin v. State, 112 Ga. App. 720, 146 S.E.2d 131 (1965); Bransome v. Barton, 154 Ga. App. 799, 270 S.E.2d 55 (1980).

Hypothetical questions involving evidence or requiring a response from a juror which might amount to a prejudgment of the case are improper and should be excluded from the examination of prospective jurors. Pinion v. State, 225 Ga. 36, 165 S.E.2d 708 (1969).

Under O.C.G.A. § 15-12-133, the trial judge retains discretion to prohibit those questions of law which the jurors would have to consider and determine from the evidence. Jenkins v. State, 157 Ga. App. 310, 277 S.E.2d 304 (1981).

General or argumentative questions. — In a prosecution for possession of cocaine with intent to distribute, exclusion of the defense counsel's voir dire questions, "What do you say is the biggest problem facing America today?" and "Do you feel like that this country is waging a so-called war on drugs?," was not an abuse of discretion since both questions were general in scope but the second was argumentative. Dean v. State, 211 Ga. App. 28, 438 S.E.2d 380 (1993).

Question about country's "ongoing war against drugs." — In a prosecution for trafficking in cocaine, the trial court did not abuse the court's discretion in refusing to allow defense counsel to question a potential juror about the juror's opinion on the country's "ongoing war against drugs." Martinez v. State, 259 Ga. App. 402, 577 S.E.2d 82 (2003).

Juror's familiarity with defendant not disqualification — Pretermitting whether a challenged juror would have been disqualified based on a relationship with the defendant, because the testimony from the juror at the new trial hearing did not reveal any bias for or against the defendant, or establish that the relationship affected the verdict, the defendant was not denied a fair and impartial trial. Moreover, even if the juror deliberately answered falsely, the defendant failed to show that a new trial was warranted because that juror had an evil motive or acted otherwise as one of the twelve jurors than with the required impartiality. Allen v. State, 290 Ga. App. 604, 659 S.E.2d 900 (2008).

2. Technical Legal Questions

General questions and technical legal questions are not proper in voir dire. Gatlin v. State, 236 Ga. 707, 225 S.E.2d 224 (1976).

Trial court did not abuse the court's discretion in precluding questions concerning the burden of proof, reasonable doubt, and the presumption of innocence. Ganas v. State, 245 Ga. App. 645, 537 S.E.2d 758 (2000).

Abstract legal questions. — This section does not require the trial court to permit the use of abstract legal questions. Bethay v. State, 235 Ga. 371, 219 S.E.2d 743 (1975).

Technical questions as to presumption of innocence. — Counsel for accused should not ask technical legal questions in regard to presumption of innocence, but should confine questions to those which may illustrate any prejudice of the juror against the accused, or any interest of the juror in the cause. McNeal

Matters of Inquiry (Cont'd)
2. Technical Legal Questions (Cont'd)

v. State, 228 Ga. 633, 187 S.E.2d 271 (1972); Stack v. State, 234 Ga. 19, 214 S.E.2d 514 (1975); Mills v. State, 137 Ga. App. 305, 223 S.E.2d 498 (1976); Bennett v. State, 153 Ga. App. 21, 264 S.E.2d 516 (1980).

Technical legal question concerning presumption of innocence is a subject of instruction by the court and is not a proper area for voir dire examination. Mills v. State, 137 Ga. App. 305, 223 S.E.2d 498 (1976).

Questions about the presumption of innocence and reasonable doubt may be prohibited. Thomas v. State, 217 Ga. App. 720, 458 S.E.2d 897 (1995).

Questions as to belief of innocence. — Court does not err in refusing to allow counsel to ask "Do you believe defendant innocent?" Pinion v. State, 225 Ga. 36, 165 S.E.2d 708 (1969).

3. Other Questions

Questions on matters contained in general statutory questions. — If there was an indication that the general questions had not been heard, it is not an abuse by the trial court to permit questions on matters contained in the general questions even though some veniremen had been questioned individually. Legare v. State, 243 Ga. 744, 257 S.E.2d 247, cert. denied, 444 U.S. 984, 100 S. Ct. 491, 62 L. Ed. 2d 413 (1979).

Question as to prejudice against defense counsel. — Although a question posed by defense counsel to determine if any potential jurors were prejudiced against counsel, as a criminal defense lawyer, was within the purview of O.C.G.A. § 15-12-133 in light of the overwhelming evidence of the defendant's guilt, the trial court's refusal to allow that question to be addressed to potential jurors was harmless error. Sanders v. State, 204 Ga. App. 37, 419 S.E.2d 24 (1992).

Question regarding reaction to evidence of similar transactions. — Trial court properly prohibited defense counsel's examination of the prospective jurors regarding their possible reaction to evidence of similar transactions. Stell v. State, 210 Ga. App. 662, 436 S.E.2d 806 (1993).

On defendant's appeal from convictions for forgery and racketeering, the trial court did not abuse the court's discretion by allowing the state to ask jurors during voir dire about whether the jurors had any knowledge about a similar transaction involving the defendant, and in allowing the state to comment on the parameters of the Racketeer Influence and Corrupt Organizations Act (RICO), O.C.G.A. § 16-14-1 et seq., during voir dire because contrary to defendant's contention that the state crafted questions that called for legal arguments and for the prospective jurors to prejudge the case, the record reveals that: (1) the state only mentioned RICO to determine whether prospective jurors had preconceived notions regarding the subject matter of the case; and (2) the question regarding the similar transaction was specifically framed to determine only whether the prospective jurors had any prior knowledge about that transaction. Davis v. State, 264 Ga. App. 128, 589 S.E.2d 700 (2003).

Questions permitted relating to racial bias. — Refusal to allow interrogation of the jurors as to their racial bias or prejudice is a denial of due process, and essential demands of fairness require that it be done as a part of the guaranty of a trial by a fair and impartial jury. Reid v. State, 129 Ga. App. 657, 200 S.E.2d 454 (1973).

O.C.G.A. § 15-12-133 gives the defendant the right to ask potential jurors questions relating to possible racial bias, and disallowance of such question is ground for reversal of conviction. Mitchell v. State, 176 Ga. App. 32, 335 S.E.2d 150 (1985).

O.C.G.A. § 15-12-133 encompasses questions regarding possible racial prejudice and bias, even when such questioning would not be constitutionally required. Legare v. State, 256 Ga. 302, 348 S.E.2d 881 (1986), appeal dismissed, 269 Ga. 468, 499 S.E.2d 640 (1998).

Restricting defendant's race bias related questions to whether any juror held the opinion that a white police officer would be more likely to tell the truth than a black defendant was reversible error

since the question defendant was permitted to ask did not address "any inclination, leaning, or bias" which a juror might have because of the fact and circumstance that the defendant was a black male and the victim an elderly white widow. Roberts v. State, 195 Ga. App. 808, 395 S.E.2d 54 (1990).

Even though the defendant should have been permitted to ask the following question on voir dire: "Are you racially biased towards blacks in any way?", since the defendant otherwise had a fair and adequate opportunity to explore the potential juror's racial bias, and an opportunity to obtain information on any potential juror's racial bias from questions posed by the codefendant's counsel during individual voir dire, any error of the trial court in putting a chill upon the defendant's right to ask the specific question in issue was harmless. Walker v. State, 215 Ga. App. 790, 452 S.E.2d 580 (1994).

In a prosecution for felony murder, aggravated assault, and other crimes, the defendant did not show the defense counsel's voir dire questions about attitudes regarding racial bias were unduly restricted as, after the trial court sustained the state's objections to questions about whether jurors had heard derogatory statements about a person of another race or had used a derogatory term regarding someone of another race, the trial court reconsidered and allowed inquiry as to whether a juror had heard or made racial remarks, and, if the answer was in the affirmative, the defense was allowed to ask if the juror's racial beliefs would make it impossible for the jurors to be impartial. Ramirez v. State, 279 Ga. 569, 619 S.E.2d 668 (2005), cert. denied, 546 U.S. 1217, 126 S. Ct. 1435, 164 L. Ed. 2d 138 (2006).

Questions regarding racial stereotypes. — Defendant's proposed question to prospective jurors asking if anyone had "formed an opinion that most of the guys that are arrested, because they are young black males, that they are guilty?" was forbidden because it called for an opinion on the ultimate issue in the case. Cherry v. State, 230 Ga. App. 443, 496 S.E.2d 764 (1998).

Questions regarding defendant's status. — Trial court should not have prohibited defendants from raising the issue of their status as prison escapees during voir dire since the issue of defendants' escape from prison was relevant to the subject matter of the state's prosecution. Napier v. State, 276 Ga. 769, 583 S.E.2d 825 (2003).

Question as to membership with defendant in racist organizations. — If the record shows that, at sentencing, appellant acknowledged that appellant was a Klansman, and the prosecution questioned jurors whether any of the jurors were members with defendant in any clubs or organizations such as the Southern Knights of the KKK or the Invisible Empire of the KKK, the court held that such questions did not improperly put defendant's character in issue and that the question asked by the prosecution falls within the right under O.C.G.A. § 15-12-133 to discover any interest prospective jurors might have in the case. Mize v. State, 190 Ga. App. 166, 378 S.E.2d 392 (1989).

Questions as to membership in social groups or organizations. — It was reversible error for the trial court to forbid the defendant to examine prospective jurors as to whether any of the jurors "belong to any social groups or organizations or clubs, whether you're actively involved in them or you just pay your membership dues to them." Perry v. State, 216 Ga. App. 661, 455 S.E.2d 607 (1995).

Questions regarding political activities properly refused. — Court's refusal to allow the defendant to question potential jurors regarding their political activities was not an abuse of discretion. Samples v. State, 217 Ga. App. 509, 460 S.E.2d 795 (1995).

Question as to employment of jurors' immediate family members by law enforcement agencies. — Trial court errs in limiting voir dire of the jurors by refusing to allow the defendant to ask the panel whether members of the jurors' immediate families had ever worked for law enforcement agencies. Henderson v. State, 251 Ga. 398, 306 S.E.2d 645 (1983).

Regard for testimony of police officer. — It is not error to refuse to allow defense counsel to ask whether a prospective juror would tend to believe or prefer

Matters of Inquiry (Cont'd)
3. Other Questions (Cont'd)

the testimony of a police officer over other testimony. Blanco v. State, 185 Ga. App. 535, 364 S.E.2d 903 (1988).

Question whether rabbi's profession or religious orientation inclines, leans, or biases the rabbi. — There is no prejudice to the defendant if, instead of merely confirming that a prospective juror is a rabbi, the district attorney queries whether the rabbi's profession or religious orientation would incline, lean, or bias the rabbi towards a certain party. This is not the same as a juror being asked if the juror as an individual will be more inclined to believe a police officer, for the latter question infringes more on the jury's right to determine individual credibility, and not on the juror's leaning, bias, or inclination because of the juror's own job or associations. Creamer v. State, 168 Ga. App. 790, 310 S.E.2d 560 (1983).

Witness status as officer, victim, or party. — Trial court did not abuse the court's discretion in disallowing questions about the credibility of witnesses based on the witnesses' status as police officers, victims, or parties. Ganas v. State, 245 Ga. App. 645, 537 S.E.2d 758 (2000).

Question as to courts' handling of sex offenses in general. — Trial court did not err in refusing to allow defense counsel to ask the entire panel of prospective jurors if any of the jurors had an opinion as to whether sex offenses were being handled adequately by the courts because counsel attempted to question the panel with reference to the issue of punishment or final resolution by the courts in general, an improper consideration for the jurors who potentially were merely to decide on the guilt or innocence of the defendant. Hunter v. State, 170 Ga. App. 356, 317 S.E.2d 332 (1984).

Questions about domestic violence beliefs. — In a prosecution for aggravated battery, allowing questions to prospective jurors about the jurors' personal beliefs regarding domestic violence issues was not an abuse of discretion. Childers v. State, 228 Ga. App. 214, 491 S.E.2d 456 (1997).

Trial court did not abuse the court's discretion in disallowing questions about cases involving a man beating a woman. Ganas v. State, 245 Ga. App. 645, 537 S.E.2d 758 (2000).

Questions regarding whether child molestation victim should have resisted. — Prosecutor's voir dire questions in a child molestation case, which included questions such as "Is there anyone on the panel that believes a child should have to physically resist an adult in order to hold the adult accountable? That they have to fight back? Kick, scream, bite, scratch? Would you feel the same way even if the child went willingly?" were properly posed by the state to determine whether the prospective jurors had preconceived notions regarding the subject matter of the case. The questions did not ask the jurors to prejudge the evidence or the factual issues in the case. Collins v. State, 310 Ga. App. 613, 714 S.E.2d 249 (2011).

Questions regarding bias based upon child testifying. — Trial court did not abuse the court's broad discretion by denying the defendant's voir dire question seeking to expose bias based upon a child testifying because, during the court's general voir dire questions, the state sought to identify jurors who had a problem with the nature of the case (statutory rape and child molestation) such that a juror questioned the juror's ability to be fair and impartial; and, after swearing the jury, the trial court posed questions to all of the jurors regarding prejudice or bias against the defendant and explained the need for jurors who could sit and fairly and impartially weigh the evidence, listen to the law, and reach a fair and impartial verdict. Davis v. State, 327 Ga. App. 729, 761 S.E.2d 139 (2014).

Questions regarding religious beliefs as to homosexuality. — Jurors' responses to defense counsel's proper questions as to their religious beliefs concerning homosexuality were sufficient to establish that such beliefs would not impact on the jurors' ability to fairly judge defendants' guilt or innocence. Baker v. State, 230 Ga. App. 813, 498 S.E.2d 290 (1998).

Questions about prior employment. — Trial court did not err in refusing to

strike a juror for cause based on the juror's failure to reveal specifics about former employment. Goss v. State, 237 Ga. App. 593, 516 S.E.2d 100 (1999).

Question as to previous military service does not relate to any fact or circumstance indicating an inclination, leaning, or bias which the juror might have respecting the subject matter of the action; and, therefore, it was not error for the trial judge to refuse to permit defendant's question on voir dire. Brown v. State, 170 Ga. App. 398, 317 S.E.2d 207 (1984).

Questions as to association with insurance company. — If interest of the insurance company is admitted, examination as to the insurance affiliations of the jurors is permissible. Parsons v. Harrison, 133 Ga. App. 280, 211 S.E.2d 128 (1974).

Restriction on the individual examination of prospective jurors on voir dire as to whether any of the jurors were agents of the insurance company in question, when the trial court had previously asked whether any of the prospective jurors were officers, directors, agents, employees, or stockholders of the insurance company, was proper. Corley v. Harris, 171 Ga. App. 688, 320 S.E.2d 833 (1984).

Questions as to insurance matter which is not involved. — If the questions objected to are not specifically permitted by this section, and the questions relate to a matter of insurance which is in no way involved either directly or indirectly, the trial court properly sustains objections of defendant thereto. Whaley v. Sim Grady Mach. Co., 218 Ga. 838, 131 S.E.2d 181 (1963).

Whether juror has been party to personal injury action is circumstance about which party has right to inquire and receive a truthful reply. Pierce v. Altman, 147 Ga. App. 22, 248 S.E.2d 34 (1978).

Question whether juror was ever crime victim permitted. — There is no abuse of discretion in permitting the state to inquire whether a prospective juror has ever been the victim of a crime. Ridgeway v. State, 174 Ga. App. 663, 330 S.E.2d 916 (1985).

Denial of defendant's motion to strike for cause a juror who had been the victim of a violent crime was upheld even though the juror expressed some reservations about the juror's ability to be impartial and desire to be impaneled since the juror testified that the juror could render a decision based on the evidence. Smith v. State, 261 Ga. App. 871, 583 S.E.2d 914 (2003).

Questions relating to size of verdict. — Under the broad sanction of this section, it must necessarily be held that prejudice as to the size of verdicts is as much comprehended under the subject matter of civil actions as the nature of the cause of action. Questions concerning such prejudice should be phrased in the most general terms, and in such a manner that the juror cannot feel that the juror is being pledged to a future action, but only that the juror is being queried on the juror's present convictions. Atlanta Joint Terms. v. Knight, 98 Ga. App. 482, 106 S.E.2d 417 (1958).

While it is permissible under the broad sanction of this section for counsel to examine prospective jurors with respect to prejudice as to the size of verdicts, such questions should be phrased in general terms and no question should be so framed as to require a response from the juror which might amount to a prejudgment of the case. Jones v. Parrott, 111 Ga. App. 750, 143 S.E.2d 393 (1965).

Questions as to previous jury service. — Juror's participation in reaching a verdict in a prior case, totally unrelated to the case being tried, is not relevant to the subject matter of the action. McGinnis v. State, 135 Ga. App. 843, 219 S.E.2d 485 (1975).

Whether or not the potential juror had previously served on a grand or petit jury would not have been relevant to the subject matter of the action. Frazier v. State, 138 Ga. App. 640, 227 S.E.2d 284 (1976).

Questions as to juror's age. — Trial court does not abuse the court's discretion in refusing to permit counsel for the accused to ask the prospective jurors their age. White v. State, 230 Ga. 327, 196 S.E.2d 849, appeal dismissed, 414 U.S. 886, 94 S. Ct. 222, 38 L. Ed. 2d 134 (1973).

Denial of the right to query as to marijuana being addictive drug is not error. Merrill v. State, 130 Ga. App. 745, 204 S.E.2d 632 (1974).

Matters of Inquiry (Cont'd)
3. Other Questions (Cont'd)

Questions relating to youth taking drugs. — There was no abuse of discretion in allowing an inquiry concerning a prospective juror's experience with children or students who had taken drugs when the defendant was charged with selling illegal drugs. Ridgeway v. State, 174 Ga. App. 663, 330 S.E.2d 916 (1985).

Questions regarding absence of blood test in DUI case. — In a prosecution for driving under the influence in which there was no blood alcohol test result to present because the defendant refused to take such a test, it was appropriate for the state to ask jurors whether the jurors believed that such a test must be produced in order for the defendant to be found guilty. Rayburn v. State, 234 Ga. App. 482, 506 S.E.2d 876 (1998).

Questions about the effect of alcohol or drugs on a person's faculties. — State's voir dire questions regarding the effect of alcohol or drugs on a person's faculties, particularly if the alcohol or drugs could make a person impulsive or violent, were properly allowed as the questions addressed whether the prospective jurors had any inclination, leaning, or bias respecting the subject matter of the action or the counsel or parties thereto, pursuant to O.C.G.A. § 15-12-133. Quintana v. State, 276 Ga. 731, 583 S.E.2d 869 (2003).

Questioning to identify individuals with strong feelings about drugs. — Any error in the trial court's limit on voir dire was harmless because the defendant was permitted to question the venire as a whole to identify prospective jurors who had strong feelings about individuals involved in the sale of drugs. Ellis v. State, 292 Ga. 276, 736 S.E.2d 412 (2013).

Voir dire question concerning robbery training courses of a bank employee is not within scope of this section. Cook v. State, 137 Ga. App. 406, 224 S.E.2d 70 (1976).

Questions as to right of self-defense. — Trial court did not abuse the court's discretion in refusing to permit defense counsel to ask the prospective jurors if the jurors believed in the right of self-defense. Petty v. State, 179 Ga. App. 767, 347 S.E.2d 663 (1986).

In a prosecution for felony murder, aggravated assault, and other crimes, defendant did not show the defense counsel's voir dire questions about attitudes regarding self-defense in response to the actions of a police officer were unduly restricted, as, following the state's objection to the phrasing of a particular question, defense counsel proposed a question about a juror's consideration of a citizen's justification in responding with force against a police officer, the state had no objection to the question as rephrased, and the trial court allowed the question. Ramirez v. State, 279 Ga. 569, 619 S.E.2d 668 (2005), cert. denied, 546 U.S. 1217, 126 S. Ct. 1435, 164 L. Ed. 2d 138 (2006).

Questions as to relative merits of various laws. — While a party is entitled to ask whether or not a juror would be able to follow the court's instructions, the court need not allow questions which ask jurors to weigh the relative merits of various laws. Williams v. State, 249 Ga. 6, 287 S.E.2d 31 (1982).

Questions as to favorite color. — Trial court did not abuse the court's discretion in not allowing the defendant to question jurors during voir dire about the jurors' favorite color. Bedingfield v. State, 219 Ga. App. 248, 464 S.E.2d 653 (1995).

Opinion as to appropriate punishment. — Questions dealing with appropriate punishment should defendant be found guilty called for prejudgment of the case and were properly prohibited. Berryhill v. State, 249 Ga. 442, 291 S.E.2d 685, cert. denied, 459 U.S. 981, 103 S. Ct. 317, 74 L. Ed. 2d 293 (1982).

Questions regarding parole in death penalty cases. — Because determining whether parole eligibility is part of the subject matter of the sentencing phase of death penalty trials, criminal defendants and the state are entitled to examine jurors concerning the jurors' inclinations, leanings, and biases regarding parole; however, the examination should be limited to the jurors' willingness to consider both a life sentence that allows for the possibility of parole and a life sentence that does not. Zellmer v. State, 272 Ga. 735, 534 S.E.2d 802 (2000).

Questions about books, movies, or television programs. — Trial court may exclude questions about books jurors have read or movies and television programs jurors have seen. Thomas v. State, 217 Ga. App. 720, 458 S.E.2d 897 (1995).

Question as to whether prospective juror wondered why two individuals were indicted but only one was on trial was not aimed at uncovering the juror's interest in the case, or any fact indicating the juror's bias in the subject matter of the case, and was improper. Roland v. State, 266 Ga. 545, 468 S.E.2d 378 (1996).

Questions about sentencing options. — Trial court abused the court's discretion in prohibiting the defendant from asking voir dire questions of prospective jurors as to whether the jurors would automatically impose the death penalty as opposed to fairly considering all three sentencing options (death, life without parole, and life with the possibility of parole) in a case involving the murder of young children as such questioning was permitted under O.C.G.A. § 15-12-133. Ellington v. State, 292 Ga. 109, 735 S.E.2d 736 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 108, 184, 248, 249.

C.J.S. — 50A C.J.S., Juries, § 473, 483 et seq.

ALR. — Failure to understand or unwillingness to accept presumption of innocence or rule as to reasonable doubt as rendering juror incompetent, 40 ALR 612.

Admissibility, in civil case, of juror's affidavit or testimony to show bias, prejudice, or disqualification of a juror not disclosed on voir dire examination, 48 ALR2d 971.

Prejudicial effect of reference on voir dire examination of jurors to settlement efforts or negotiations, 67 ALR2d 560.

Right of counsel in criminal case personally to conduct the voir dire examination of prospective jurors, 73 ALR2d 1187.

Propriety of inquiry on voir dire as to juror's attitude toward or acquaintance with literature dealing with amount of damage awards, 82 ALR2d 1420; 63 ALR5th 285.

Voir dire inquiry, in personal injury or death case, as to prospective jurors' acquaintance with literature dealing with amounts of verdicts, 89 ALR2d 1177.

Disclosure in criminal case of juror's political, racial, religious, or national origin prejudice against accused or witnesses as ground for new trial or reversal, 91 ALR2d 1120.

Propriety and effect of asking prospective jurors hypothetical questions, on voir dire, as to how they would decide issues of case, 99 ALR2d 7.

Claustrophobia or other neurosis of juror as subject of inquiry on voir dire or of disqualification of juror, 20 ALR3d 1420.

Propriety, on voir dire in criminal case, of inquiries as to juror's possible prejudice if informed of defendant's prior convictions, 43 ALR3d 1081.

Jury: membership in racially biased or prejudiced organization as proper subject of voir dire inquiry or ground for challenge, 63 ALR3d 1052.

Juror's voir dire denial or nondisclosure of acquaintance or relationship with attorney in case, or with partner or associate of such attorney, as ground for new trial or mistrial, 64 ALR3d 126.

Racial or ethnic prejudice of prospective jurors as proper subject of inquiry or ground of challenge on voir dire in state criminal case, 94 ALR3d 15.

Religious belief, affiliation, or prejudice of prospective jurors as proper subject of inquiry or grounds for challenge on voir dire, 95 ALR3d 172.

Effect of juror's false or erroneous answer on voir dire in personal injury or death action as to previous claims or actions for damages by himself or his family, 38 ALR4th 267.

Propriety of asking prospective female jurors questions on voir dire not asked of prospective male jurors, or vice versa, 39 ALR4th 450.

Necessity for presence of judge during voir dire examination of prospective jurors in state criminal case, 39 ALR4th 465.

Cure of prejudice resulting from state-

ment by prospective juror during voir dire, in presence of other prospective jurors, as to defendant's guilt, 50 ALR4th 969.

Professional or business relations between proposed juror and attorney as ground for challenge for cause, 52 ALR4th 964.

Fact that juror in criminal case, or juror's relative or friend, has previously been victim of criminal incident as ground of disqualification, 65 ALR4th 743.

Effect of juror's false or erroneous answer on voir dire regarding previous claims or actions against himself or his family, 66 ALR4th 509.

Exclusion of public and media from voir dire examination of prospective jurors in state criminal case, 16 ALR5th 152.

Examination and challenge of federal case jurors on basis of attitudes toward homosexuality, 85 ALR Fed. 864.

15-12-134. Challenge of juror in civil case for desire or expression of opinion as to which party should prevail; hearing.

In all civil cases it shall be good cause of challenge that a juror has expressed an opinion as to which party ought to prevail or that he has a wish or desire as to which shall succeed. Upon challenge made by either party upon either of these grounds, it shall be the duty of the court to hear the competent evidence respecting the challenge as shall be submitted by either party, the juror being a competent witness. The court shall determine the challenge according to the opinion it entertains of the evidence adduced thereon. (Penal Code 1895, § 855; Penal Code 1910, § 859; Code 1933, § 59-705; Ga. L. 1949, p. 1082, § 2; Ga. L. 1951, p. 214, § 2.)

History of Code section. — The language of this Code section is derived in part from the decisions in Justices of Inferior Court of Pike Co. v. Griffin & West Point Plane Road Co., 15 Ga. 39 (1854), and Hilton & Dodge Lumber Co. v. Ingram, 135 Ga. 696, 70 S.E. 234 (1911).

Cross references. — Incompetency of person to serve as juror in divorce case for having conscientious scruples as to granting of divorces, § 19-5-9.

Law reviews. — For article comparing sections of the Georgia Civil Practice Act (§ 9-11-1 et seq.) with preexisting provisions of the Georgia Code, see 3 Ga. St. B.J. 295 (1967). For article, "Practitioner's Note Jury Selection: Whose Job Is It, Anyway?," see 23 Ga. St. U.L. Rev. 617 (2007).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
GROUNDS FOR CHALLENGE

General Consideration

This section is in no way determinative of question of qualifications of jurors and the jurors' impartiality. Walls v. State, 83 Ga. App. 318, 63 S.E.2d 437 (1951).

Responsibility of judge during jury selection. — Trial judge should err on the side of caution by dismissing, rather than trying to rehabilitate, biased jurors because the judge is the only person in a courtroom whose primary concern, indeed primary duty, is to ensure the selection of

a fair and impartial jury. Walls v. Kim, 250 Ga. App. 259, 549 S.E.2d 797 (2001), aff'd in part and rev'd in part, 275 Ga. 177, 563 S.E.2d 847 (2002).

Trial court not required to further inquire into pastor's comment. — There was no manifest abuse in a trial court's decision to forego further inquiry of a juror who said that although the juror was a pastor and believed Christians should not sue one another, the juror would listen to the testimony in the medical malpractice case and decide the case as a juror reviewing the merits and not as a pastor. Clack-Rylee v. Auffarth, 273 Ga. App. 859, 616 S.E.2d 193 (2005).

Right to voir dire. — Party may avail oneself of challenge to jurors on account of their interest in the case by motion to put jurors on their voir dire. In such case the court may propound questions to each juror or the court may propound them to the entire panel, adopting such plan as will assure a response to each question from each juror. Bryan v. Moncrief Furnace Co., 168 Ga. 825, 149 S.E. 193 (1929).

Either party has a right to request that jurors be put upon their voir dire in order that their competency may be determined. When such request is made, it is the duty of the court to propound, or cause to be propounded, such questions as will test the competency of the jurors to pass upon the issues in the case. Bryan v. Moncrief Furnace Co., 168 Ga. 825, 149 S.E. 193 (1929); Garner v. State, 67 Ga. App. 772, 21 S.E.2d 656 (1942).

Challenge based on incapacity. — Principal challenge to the poll is based on alleged facts from which the juror is conclusively presumed to be incapacitated to serve. The question principally raised is one of law and is to be decided by the court, but such decision is subject to review. Bowens v. State, 116 Ga. App. 577, 158 S.E.2d 420 (1967).

Right to inquire as to inclination, leaning, or bias. — Party is given the right to inquire into any fact or circumstance indicating any inclination, leaning, or bias which the juror might have respecting the subject matter of the suit. Falsetta v. State, 158 Ga. App. 392, 280 S.E.2d 411 (1981).

Disqualified jurors. — Parties should not be required to use the parties' strikes in an effort to remove disqualified jurors. Jones v. Cloud, 119 Ga. App. 697, 168 S.E.2d 598 (1969).

Improper ruling on qualification not error if not all strikes used. — When a challenge is made and improperly overruled but such juror does not serve on the jury trying the case because the juror is stricken by the complaining party, such ruling is not error unless it appears that the party had to exhaust the juror's peremptory challenges in order to get rid of the juror. Ellison v. National By-Products, Inc., 153 Ga. App. 475, 265 S.E.2d 829 (1980).

Waiver of disqualification. — If, after the verdict, a juror is attacked as being disqualified by reason of the juror's relationship to the plaintiff, it is essential for the movant and counsel to establish that neither knew of the relationship, nor could the relationship have been discerned by the exercise of ordinary diligence, for if either knew or had reason to suspect the relationship, and remained silent, the movant will be presumed to have waived the disqualification. Jennings v. Autry, 94 Ga. App. 344, 94 S.E.2d 629 (1956).

When a party is furnished with a list of the jury and has reasonable grounds to suspect that one of the jurors is disqualified, the burden is on that party to call attention to that fact and to make further investigation to determine the truth of the situation; failure to exercise due diligence waives the disqualification. Sancken Assocs. v. Stokes, 119 Ga. App. 282, 166 S.E.2d 924 (1969).

Acceptance of juror with knowledge of any alleged disqualification is waiver of such disqualification. Sanders v. State, 246 Ga. 42, 268 S.E.2d 628 (1980).

Grant of new trial. — If a judge did not conduct an adequate voir dire and should have excused a juror for cause under O.C.G.A. § 15-12-134, a successor judge properly granted a new trial. Bennett v. Mullally, 263 Ga. App. 215, 587 S.E.2d 385 (2003).

Rehabilitation of juror proper. — In a negligence suit involving the death of an individual in an automobile collision, a trial court did not abuse the court's discretion in rehabilitating three biased jurors

General Consideration (Cont'd)

as the record showed, while each of the three jurors expressed an initial distrust of corporations in general, the three jurors all unequivocally stated that the three jurors did not have a particular bias against the auto manufacturer or the hitch manufacturer, who were parties in the litigation, and could decide the issues in the case based solely on the evidence presented and the charge given by the court. Ford Motor Co. v. Gibson, 283 Ga. 398, 659 S.E.2d 346 (2008).

Cited in Hilton & Dodge Lumber Co. v. Ingram, 135 Ga. 696, 70 S.E. 234 (1911); Lundy v. Livingston, 11 Ga. App. 804, 76 S.E. 594 (1912); Sheffield v. Sheffield, 150 Ga. 440, 104 S.E. 213 (1920); Padgett v. Padgett, 63 Ga. App. 70, 10 S.E.2d 127 (1940); Gossett v. State, 203 Ga. 692, 48 S.E.2d 71 (1948); Lewis v. Williams, 78 Ga. App. 494, 51 S.E.2d 532 (1949); Adler v. Adler, 207 Ga. 394, 61 S.E.2d 824 (1950); Dyer v. State, 86 Ga. App. 835, 72 S.E.2d 781 (1952); Bland v. State, 210 Ga. 100, 78 S.E.2d 51 (1953); Stevens v. Wright Contracting Co., 92 Ga. App. 373, 88 S.E.2d 511 (1955); Hooks v. State, 215 Ga. 869, 114 S.E.2d 6 (1960); Whaley v. Sim Grady Mach. Co., 107 Ga. App. 96, 129 S.E.2d 362 (1962); Britten v. State, 221 Ga. 97, 143 S.E.2d 176 (1965); Roach v. State, 221 Ga. 783, 147 S.E.2d 299 (1966); Harris v. State, 120 Ga. App. 359, 170 S.E.2d 743 (1969); Hodges v. Carpenter, 127 Ga. App. 358, 193 S.E.2d 199 (1972); Durham v. State, 129 Ga. App. 5, 198 S.E.2d 387 (1973); Shouse v. State, 231 Ga. 716, 203 S.E.2d 537 (1974); Hinson v. DOT, 135 Ga. App. 258, 217 S.E.2d 606 (1975); Hall v. State, 135 Ga. App. 690, 218 S.E.2d 687 (1975); Akin v. Patton, 235 Ga. 51, 218 S.E.2d 802 (1975); Head v. State, 235 Ga. 677, 221 S.E.2d 435 (1975); Holloway v. State, 137 Ga. App. 124, 222 S.E.2d 898 (1975); Johnson v. Jackson, 140 Ga. App. 252, 230 S.E.2d 756 (1976); Robinson v. State, 238 Ga. 291, 232 S.E.2d 561 (1977); Mitchell v. State, 239 Ga. 456, 238 S.E.2d 100 (1977); Lamb v. State, 241 Ga. 10, 243 S.E.2d 59 (1978); Firestone Tire & Rubber Co. v. King, 145 Ga. App. 840, 244 S.E.2d 905 (1978); Pierce v. Altman, 147 Ga. App. 22, 248 S.E.2d 34 (1978); Smith v. State, 148 Ga. App. 1, 251 S.E.2d 13 (1978); Wallace v. State, 248 Ga. 255, 282 S.E.2d 325 (1981); Deering v. State, 168 Ga. App. 835, 310 S.E.2d 720 (1983).

Grounds for Challenge

Disqualification for favor. — Challenge to favor is based on circumstances raising a suspicion of the existence of actual bias in the mind of the juror for or against the party, as for undue influence, or prejudice, which essentially raises a question of fact that is decided by the court, and the court's decision on a challenge to favor is final and conclusive as to the credibility of the proof. Bowens v. State, 116 Ga. App. 577, 158 S.E.2d 420 (1967).

O.C.G.A. § 15-12-134 deals with scope of voir dire but does not set forth test for disqualification for favor. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981).

Challenges for favor are based on admissions of juror or facts and circumstances raising suspicion that juror is actually biased for or against one of the parties. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981).

Juror should come to consideration of case unaffected by any previous judgment or opinion, as to any material fact in the issue to be tried, relating to the parties, the subject matter, or the credibility of the witnesses in the particular case to be tried. Bowens v. State, 116 Ga. App. 577, 158 S.E.2d 420 (1967).

Juror should be free of prejudgment. — Jurors should come to the consideration of a case free from even a suspicion of prejudgment or a fixed opinion upon any material fact in the issue to be tried as to the parties, the subject-matter, or the credibility of the witnesses. Edwards v. Griner, 42 Ga. App. 282, 155 S.E. 789 (1930).

Doubt existing in juror's mind will disqualify juror. McLaren v. Birdsong & Sledge, 24 Ga. 265 (1858).

Impartiality not necessarily determined by voir dire. — Fact that juror may be qualified under usual voir dire questions is not necessarily sufficient test of juror's impartiality. Bowens v. State, 116 Ga. App. 577, 158 S.E.2d 420 (1967).

Expression of firm opinion. — If the juror states that the juror will retain the juror's opinion through the trial unless the evidence should prove that the juror is wrong as to the juror's opinion, the trial court errs in failing to disqualify the juror for cause upon motion duly made by counsel for the defendant. Bowens v. State, 116 Ga. App. 577, 158 S.E.2d 420 (1967).

Jurors were clients of opposing counsel. — Pursuant to O.C.G.A. § 15-12-134 and Ga. Const. 1983, Art. I, Sec. 1, Para. XI(a), a trial court erred in failing to either grant a challenge for cause or to effectively rehabilitate two jurors who expressed a clear preference for opposing counsel because both were or had been clients of opposing counsel. Harper v. Barge Air Conditioning, Inc., 313 Ga. App. 474, 722 S.E.2d 84 (2011).

Juror not incompetent if opinion not fixed. — To disqualify one from being a juror in a criminal case, one must have formed and expressed an opinion, either from having seen the crime committed, or from having heard the testimony under oath. One who from some other cause has formed and expressed an opinion that is not fixed and determined, and who indicates one's competency by answering the statutory questions on voir dire, is not an incompetent juror. Johnson v. State, 209 Ga. 333, 72 S.E.2d 291 (1952); Griffeth v. State, 154 Ga. App. 643, 269 S.E.2d 501 (1980).

Prejudice expressed based on anticipated evidence. — When a juror responds to a voir dire question and by the answer indicates that the juror may be so prejudiced by certain anticipated evidence that the juror cannot render a fair verdict as to the cause of the accident in question, the juror should be excused for cause. Jones v. Cloud, 119 Ga. App. 697, 168 S.E.2d 598 (1969).

Sitting at both criminal trial and civil action based on same facts. — In a suit for damages by a widow for the homicide of her husband, it was alleged that the deceased was unlawfully shot to death by the defendant, who at a previous term of the court, had been acquitted of the offense of murdering the plaintiff's husband, and that the suit for damages and the previous indictment and trial for murder were based upon the same transaction and facts, any person who sat as a juror in the murder case was disqualified from serving as a juror in the civil case. Edwards v. Griner, 42 Ga. App. 282, 155 S.E. 789 (1930).

Policy holder in interested insurance company. — Since policy holders of some insurance companies are "interested" in the profits of the company, when a defendant was admittedly covered by liability insurance and it was admitted that the company's stockholders, employees, and their relatives were properly purged from the prospective jurors, it was not error to seek to purge prospective jurors who were policy holders in the absence of a showing that no policies were issued by the particular company which would create such interest in its policy holders. Williams v. Lane, 103 Ga. App. 150, 118 S.E.2d 730 (1961).

Relationship to insurance company. — It is proper to qualify jurors with reference to their relationship to an insurance company having a financial interest in the outcome of litigation. Proper practice in qualifying the jury would be to confine the inquiry as to the relationship of the jurors to the particular company or companies having a financial interest in the result of the litigation. Leggett v. Brewton, 104 Ga. App. 580, 122 S.E.2d 469 (1961).

Relationship of juror to party creates pecuniary interest. Howell v. Howell, 59 Ga. 145 (1877); Melson v. Dickson, 63 Ga. 682, 36 Am. R. 128 (1879).

Acquaintanceship with witness. — In a premises liability case, the trial court did not err in refusing to excuse a juror for cause because the juror was acquainted with a defense witness, who worked at the dealership where the juror's car was frequently serviced and who sent the juror a card when the juror's child was born; the juror's statement that the juror was not absolutely certain how the juror's relationship with the witness would affect the juror's judgment did not demand as a matter of law that the juror be excused for cause, and plaintiffs did not show that the juror could not decide the case based on the evidence and the trial court's instructions. Abdelaal v. Greens at Windy Hill,

Grounds for Challenge (Cont'd)

L.P., 285 Ga. App. 367, 646 S.E.2d 474 (2007).

Failure of juror to inform court of prior representation by counsel. — When during the examination of prospective jurors one juror fails to inform counsel for the defendant, after being asked, that the juror has been represented by counsel for the plaintiffs and after the verdict so informs the trial court, it is obvious that the juror, who was asked the question along with the rest of the panel, was under a duty to speak and that the failure to answer is tantamount to an oral response that the juror has never been represented by counsel for the plaintiff. Accordingly, a new trial must be granted. Glover v. Maddox, 100 Ga. App. 262, 111 S.E.2d 164 (1959).

Witness biased in favor of party. — In a wrongful death action against defendant physician, the trial judge abused the judge's judicial discretion in refusing to dismiss for cause a juror who was a nurse who worked in emergency rooms with the defendant and who indicated a hope that the case would come out in favor of the defendant. Walls v. Kim, 250 Ga. App. 259, 549 S.E.2d 797 (2001), aff'd in part and rev'd in part, 275 Ga. 177, 563 S.E.2d 847 (2002).

Inquiry into relationship with trade association. — In an action for personal injuries, if it appears that the defendant is protected by a trade association against liability for injuries such as were sued for, it is not error for the court, in examining prospective jurors on their voir dire, to inquire whether any juror is an employee of the association, or related to stockholders thereof. Atlanta Coca-Cola Bottling Co. v. Shipp, 41 Ga. App. 705, 154 S.E. 385 (1930).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 248 et seq.

C.J.S. — 50A C.J.S., Juries, §§ 370, 390 et seq.

ALR. — Betting on result as disqualifying juror, 2 ALR 813.

Relationship to prosecutor or witness for prosecution as disqualifying juror in criminal case, 18 ALR 375.

Failure to understand or unwillingness to accept presumption of innocence or rule as to reasonable doubt as rendering juror incompetent, 40 ALR 612.

Right to introduce extrinsic evidence in support of challenge to juror for cause, 65 ALR 1056.

Challenge of proposed juror for implied bias or interest because of relationship to one who would be subject to challenge for that reason, 86 ALR 118.

Prospective juror's connection with insurance company as ground of challenge for cause in action for personal injuries or damage to property, 103 ALR 511.

Disqualification of judge who presided at trial or of juror as ground of habeas corpus, 124 ALR 1079.

Statements or intimation by member of jury that defendant is covered by insurance or for other reason would not bear the real burden of an adverse verdict, 138 ALR 464.

Competency of juror as affected by his participation in a case of similar character, but not involving the party making the objection, 160 ALR 753.

Effect of, and remedies for, exclusion of eligible class of persons from jury list in civil case, 166 ALR 1422.

Admissibility, in civil case, of juror's affidavit or testimony to show bias, prejudice, or disqualification of a juror not disclosed on voir dire examination, 48 ALR2d 971.

Prejudicial effect, in civil case, of communications between witnesses and jurors, 52 ALR2d 182.

Contact or communication between juror and party or counsel during trial of civil case as ground for mistrial, new trial, or reversal, 62 ALR2d 298.

Juror's previous knowledge of facts of civil case as disqualification, 73 ALR2d 1312.

Disclosure in criminal case of juror's political, racial, religious, or national origin prejudice against accused or witnesses as ground for new trial or reversal, 91 ALR2d 1120.

Claustrophobia or other neurosis of juror as subject of inquiry on voir dire or of disqualification of juror, 20 ALR3d 1420.

Jury: membership in racially biased or prejudiced organization as proper subject of voir dire inquiry or ground for challenge, 63 ALR3d 1052.

Similarity of occupation between proposed juror and alleged victim of crime as affecting juror's competency, 71 ALR3d 974.

Racial or ethnic prejudice of prospective jurors as proper subject of inquiry or ground of challenge on voir dire in state criminal case, 94 ALR3d 15.

Religious belief, affiliation, or prejudice of prospective jurors as proper subject of inquiry or grounds for challenge on voir dire, 95 ALR3d 172.

Communications between court officials or attendants and jurors in criminal trial as ground for mistrial or reversal — Post-Parker cases, 35 ALR4th 890.

Professional or business relations between proposed juror and attorney as ground for challenge for cause, 52 ALR4th 964.

Prospective juror's connection with insurance company as ground for challenge for cause, 9 ALR5th 102.

Prejudicial effect, in civil case, of communications between court officials or attendants and jurors, 31 ALR5th 572.

15-12-135. Disqualification for relationship to interested party.

(a) All trial jurors in the courts of this state shall be disqualified to act or serve in any case or matter when such jurors are related by consanguinity or affinity to any party interested in the result of the case or matter within the sixth degree as computed according to the civil law. Relationship more remote shall not be a disqualification.

(b) Notwithstanding subsection (a) of this Code section, any juror, irrespective of his relationship to a party to the case or his interest in the case, shall be qualified to try any civil case when there is no defense filed unless one of the parties to the case objects to the related juror. (Ga. L. 1933, p. 187, § 1; Code 1933, § 59-716; Ga. L. 1935, p. 396, § 1.)

Law reviews. — For comment on Williams v. State, 206 Ga. 107, 55 S.E.2d 589 (1949), see 12 Ga. B.J. 326 (1950).

JUDICIAL DECISIONS

Analysis

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General Consideration

Constitutionality of 1935 amendment to section. — Ga. L. 1935, p. 396, § 1, amending former Code 1933, § 59-716 (see now O.C.G.A. § 15-12-135), does not violate Ga. Const. 1945, Art. III, Sec. VII, Para. XVI (see now Ga. Const. 1983, Art. III, Sec. V, Para. IV), on grounds that no reference is made in the title to former Code 1933, § 59-804 (see now O.C.G.A. § 15-12-163), providing that a juror may be objected to upon the

General Consideration (Cont'd)

ground "that he is so near of kin to the prosecutor, or the accused, or the deceased, as to disqualify him by law from serving on the jury" or because no reference is made to the decisions of the Supreme Court, which prior to 1935 had declared that a juror related within the ninth degree was disqualified. Davis v. State, 204 Ga. 467, 50 S.E.2d 604 (1948).

1935 amendment did not change definition of relationship by affinity or consanguinity. — Ga. L. 1935, p. 396, § 1, amending this section, does not change definition of relationship by affinity or consanguinity but merely prescribes the method of computation and the degree of relationship that would disqualify a juror, and in no way changes the rule for determining the extent of relationship as between husband and wife. Garrett v. State, 203 Ga. 756, 48 S.E.2d 377 (1948).

Effect of 1935 amendment on other section dealing with disqualifications. — Ga. L. 1935, p. 396, § 1, amending former Code 1933, § 59-716 (see now O.C.G.A. § 15-12-135), neither repealed nor amended former Code 1933, § 59-804 (see now O.C.G.A. § 15-12-163); it merely did what the Supreme Court, in the absence of any statutory law on the subject, had previously done, that was, establish the degree of relationship which would disqualify a juror, and former Code 1933, § 59-804 was still in full force and effect. Davis v. State, 204 Ga. 467, 50 S.E.2d 604 (1948).

Relationship to prosecutor. — If it appears that a juror is related within the prohibited degree to the prosecutor, the law declares the disqualification; and if such relation is unknown to the accused until after the verdict, a new trial will be granted. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939).

Purpose of the law in disqualifying jurors who are related within the prohibited degree to prosecutors is to guarantee to the defendant an impartial jury. Tatum v. State, 206 Ga. 171, 56 S.E.2d 518 (1949).

Incompetent jury cannot render lawful verdict. — Jury composed of people whose relationship to the parties renders the people incompetent as jurors cannot render a lawful verdict; it cannot be said that the defendants in error have had their case tried, certainly not legally, and, although the verdict may be in accordance with the facts, and such as a lawful jury should have rendered, yet it is no verdict, and the court did right to set the verdict aside. Tatum v. State, 206 Ga. 171, 56 S.E.2d 518 (1949).

New trial is demanded if there is no doubt as to the disqualification or incompetency of a juror and if such disqualification has not been waived by knowledge thereof for the reason that the verdict is illegal and void. Ferguson v. Bank of Dawson, 53 Ga. App. 309, 185 S.E. 602 (1936).

Supreme Court will not interfere with judgment of fact by trial judge. — When an extraordinary motion for new trial is made on the ground that the verdict is illegal and void because one of the jurors rendering the verdict was disqualified because the juror was related to the prosecutor within the degree of relationship prohibited, the judge passing on the motion becomes and is the exclusive trier of the fact in controversy, and the Supreme Court will not interfere with the judge's decision on that issue when there is any evidence to support the judge's finding. Reece v. State, 208 Ga. 690, 69 S.E.2d 92 (1952).

Relationship of juror to one defendant on other defendants. — While the fact that one of the jurors is related to the wife of one defendant will disqualify the juror, it will not be grounds for reversing the conviction of the defendant to whom the juror was related for the reason that the relationship is presumed to be favorable to that defendant; yet, it is apparent that such presumption of favor does not exist as to the other defendant, and a juror who is not qualified to serve, but does serve, is grounds for voiding the trial. Finger v. State, 112 Ga. App. 188, 144 S.E.2d 479 (1965).

Applicability if only one conspirator indicted. — Rule of law that disqualifies a juror if the juror is related within the prohibited degree to a prosecutor or to one of the defendants in a joint indictment applies in principle in a case when a conspiracy is alleged to exist between two

persons, although only one is indicted and on trial. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939).

Effect of pretrial order on disqualification. — When the parties entered into a pretrial order under which only officers, agents, employees, and members of the churches that sought probate of a will in which they were named would be disqualified as jurors, the pretrial order controls the course of the trial, unless it is modified to prevent manifest injustice. Thus, jurors who would have been disqualified under O.C.G.A. § 15-12-135 may not be disqualified. Ricketson v. Fox, 247 Ga. 162, 274 S.E.2d 556 (1981).

Cited in Calhoun ex rel. Chapman v. Gulf Oil Corp., 189 Ga. 414, 5 S.E.2d 902 (1939); Goldstein v. Ipswich Hosiery Co., 104 Ga. App. 500, 122 S.E.2d 339 (1961); Southeastern Fid. Ins. Co. v. Fluellen, 128 Ga. App. 877, 198 S.E.2d 407 (1973); Purvis v. Tatum, 131 Ga. App. 116, 205 S.E.2d 75 (1974); Jones v. State, 139 Ga. App. 824, 229 S.E.2d 789 (1976); Drake v. State, 241 Ga. 583, 247 S.E.2d 57 (1978); Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981); Thompson v. Sawnee Elec. Membership Corp., 157 Ga. App. 561, 278 S.E.2d 143 (1981); Gribble v. State, 248 Ga. 567, 284 S.E.2d 277 (1981); Vining v. State, 162 Ga. App. 331, 290 S.E.2d 345 (1982); Walls v. State, 161 Ga. App. 235, 291 S.E.2d 15 (1982); Shields v. State, 162 Ga. App. 388, 291 S.E.2d 448 (1982); Hudson v. State, 250 Ga. 479, 299 S.E.2d 531 (1983); Whittington v. State, 252 Ga. 168, 313 S.E.2d 73 (1984); Smith v. Gearinger, 888 F.2d 1334 (11th Cir. 1989); Davis v. State, 194 Ga. App. 482, 391 S.E.2d 124 (1990); Reid v. State, 204 Ga. App. 358, 419 S.E.2d 321 (1992); Calhoun v. Purvis, 206 Ga. App. 565, 425 S.E.2d 901 (1992); Smith v. Crump, 223 Ga. App. 52, 476 S.E.2d 817 (1996).

Disqualifying Relationships

1. In General

This section is applicable to jurors and interested parties related by consanguinity or affinity, i.e., by blood or by marriage. Eaton v. Grindle, 236 Ga. 324, 223 S.E.2d 670 (1976).

Juror who is related within sixth degree of consanguinity or affinity to prosecutor is disqualified by fact of relationship and the fact that the juror did not know of the relationship or that the juror's kinsman was a prosecutor does not relieve the disqualification. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939); Tatum v. State, 206 Ga. 171, 56 S.E.2d 518 (1949).

Under this section, a juror, related by consanguinity or affinity to any party interested in the result of the case within the sixth degree, as computed by the civil law, is disqualified to serve in the trial of the case. Jennings v. Autry, 94 Ga. App. 344, 94 S.E.2d 629 (1956).

Juror is incompetent if related within the prohibited degree to person beneficially interested in result of the litigation although not party of record. Stokes v. McNeal, 48 Ga. App. 816, 173 S.E. 879 (1934).

Relationship which disqualifies juror from serving is relationship by consanguinity; the relationship by affinity extends only to the husband or wife of such blood kin. Pope v. State, 52 Ga. App. 411, 183 S.E. 630 (1936).

Computation of degree of kinship. — Civil law degree of kinship is ascertained by counting from the juror to the common ancestor to the interested party. Therefore, the correct method of computation is to count the "steps" or generations from one ancestor to the next counting each "step" or generation as one degree, and not to count each ancestor as a degree. If the sum is within the sixth degree, the juror is disqualified to serve in the matter. Eaton v. Grindle, 236 Ga. 324, 223 S.E.2d 670 (1976); Cheeks v. State, 234 Ga. App. 446, 507 S.E.2d 204 (1998).

Civil law degree of kinship means that the reckoning is taken from one of the persons up to the common ancestor, and then down again to the other person or party. Smith v. State, 62 Ga. App. 494, 8 S.E.2d 663 (1940); Williams v. State, 206 Ga. 107, 55 S.E.2d 589 (1949) (for comment on Williams v. State, see 12 Ga. B.J. 326 (1950)).

2. Kinship

Husband is related by affinity to blood relatives of his wife but not to

Disqualifying Relationships (Cont'd)
2. Kinship (Cont'd)

those persons to whom his wife is related only by affinity. Garrett v. State, 203 Ga. 756, 48 S.E.2d 377 (1948).

Criminal defendant is considered related by marriage to blood relatives of his wife, but not to people that his wife is related to only by marriage. Alexander v. State, 260 Ga. 870, 401 S.E.2d 7 (1991).

Kinship disqualifying. — If the grandmother of the complainant is a sister of the grandfather of two jurors, those jurors are related within the sixth degree to an interested party and therefore disqualified. Smith v. State, 62 Ga. App. 494, 8 S.E.2d 663 (1940).

Witness kinship disqualifying. — Under O.C.G.A. § 15-12-135, the trial court may exclude a prospective juror upon the court's own motion if the juror's father is a physician testifying for one of the parties at trial. Elder v. Metropolitan Atlanta Rapid Transit Auth., 160 Ga. App. 78, 286 S.E.2d 315 (1981), overruled on other grounds, Chadwick v. Miller, 169 Ga. App. 338, 312 S.E.2d 835 (1983).

Exclusion proper although degrees of consanguinity not established. — Trial court properly excluded a juror who was a cousin of the defendant and a relative of one of the defendant's grandparents who testified at the trial; even if the juror's statements about the particular degrees of consanguinity were vague, it was within the trial court's discretion to exclude the juror whether or not the test of O.C.G.A. § 15-12-135(a) was met. Paige v. State, 281 Ga. 504, 639 S.E.2d 478 (2007).

No evidence of kinship found. — Defendant's claim that three jurors who served on the jury in defendant's criminal trial should have been disqualified under O.C.G.A. § 15-12-135(a) by reason of their consanguinity to defendant lacked merit since the record contained no evidence that any of the jurors were related to defendant. Webb v. State, 275 Ga. 425, 566 S.E.2d 680 (2002).

Juror whose brother marries the sister of the prosecutor's wife does not thereby become related to the prosecutor so as to be disqualified. Lemming v. State, 61 Ga. App. 605, 7 S.E.2d 42 (1940).

When the juror's sister married the brother of the defendant's wife, and this juror fails to answer in the affirmative when asked if the juror was related by blood or marriage to either of the parties to the action, such complaint fails to merit a new trial. Everett v. Culberson, 215 Ga. 577, 111 S.E.2d 367 (1959).

If the prosecutor is the father-in-law of a person to whom a juror is related in the fifth degree under the civil law, such juror is not disqualified. Finger v. State, 112 Ga. App. 188, 144 S.E.2d 479 (1965).

Juror's relationship to victim. — Trial court was authorized to find that a defendant waived the disqualification of a juror based on that juror's familial relation to the victim of the crimes for which the defendant was convicted as the defendant did not offer any evidence that the defendant did not know of, and could not have discovered, the juror's disqualifying relationship. Although the juror testified at the hearing on the defendant's motion for a new trial that the juror only learned that the juror's uncle was the victim's grandfather after the juror's service was complete, the juror's ignorance of the relationship was not probative of whether the defendant knew, or through the exercise of ordinary diligence could have discovered, the relationship. Moran v. State, 293 Ga. App. 279, 666 S.E.2d 726 (2008).

Third cousins are eighth-degree relations and, thus, are not within the legally prohibited degree of relationship under O.C.G.A. § 15-12-135. Cheeks v. State, 234 Ga. App. 446, 507 S.E.2d 204 (1998).

Fourth cousin is not within the prohibited degree. Merrell v. State, 135 Ga. App. 699, 218 S.E.2d 458 (1975).

Relationship to attorney hired to assist in jury selection. — Juror related to an attorney who is retained only to assist counsel for the defendant in the selection of a jury and who is not hired for a fee contingent on the outcome of the case is not disqualified. Johnson v. Jackson, 140 Ga. App. 252, 230 S.E.2d 756 (1976).

3. Other Relationships

Anyone who has a wish or a desire that one of the parties to an action

should prevail is incompetent to serve on a jury. Ferguson v. Bank of Dawson, 53 Ga. App. 309, 185 S.E. 602 (1936).

Defense counsel's representation of the juror's wife in a separate civil matter was not grounds for disqualification of the juror. Smith v. Folger, 237 Ga. App. 888, 517 S.E.2d 106 (1999).

Contributor to fund to aid prosecution as voluntary prosecutor. — One who contributes to fund for purpose of defraying expense of apprehending criminal or for prosecution of case is a voluntary prosecutor. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939).

If one contributes to a fund to be used in employing an attorney to aid the solicitor-general (now district attorney) in the prosecution of a particular person for an alleged offense with which the person is charged, the person so contributing is to be considered as a volunteer prosecutor. Tatum v. State, 206 Ga. 171, 56 S.E.2d 518 (1949).

Test to be applied in determining whether one becomes a volunteer prosecutor by contributing money for the employment of special counsel to assist the state is not whether the money contributed was actually used in the prosecution, but whether in fact, if a contribution was made for the specific purpose of employing counsel, such counsel was employed and assisted in the prosecution of the case. Tatum v. State, 206 Ga. 171, 56 S.E.2d 518 (1949).

Juror related to voluntary prosecutor disqualified. — If, at the inception of the trial, the court ruled that all jurors, related within the prohibited degree to any person whose name appeared on a list of those who by making contributions for the purpose of employing special counsel to assist in the prosecution had become voluntary prosecutors of the defendant on trial, were disqualified from serving as jurors, one who was so related and served vitiated the trial. Tatum v. State, 206 Ga. 171, 56 S.E.2d 518 (1949).

Relationship of contributor to family of murder victim. — In murder trial, the court did not err in refusing the motion of counsel for the defendant to purge the jury as to relationship of persons whose names appeared on certain lists or petitions as having made contributions to the family of the deceased. Tatum v. State, 206 Ga. 171, 56 S.E.2d 518 (1949).

Acquaintance with family member. — Trial court did not improperly seat six jurors in a death penalty case as: (1) the first juror testified that, despite the juror's acquaintance with the victim's family, the juror could act impartially, listen to the evidence, and decide the case based upon the facts and arguments; (2) a second juror stated that the juror's acquaintance with a family member of the victim would have no bearing on the juror's consideration of the case; and (3) four jurors testified that they could fairly consider all possible punishments for the crime, not just the death penalty. Thomason v. State, 281 Ga. 429, 637 S.E.2d 639 (2006).

Contribution by plaintiff to fund for juror's office expenses. — Fact that the plaintiff contributed to a fund used to keep up and pay the expenses of the juror's office renders the juror incompetent to sit in a case when the plaintiff was a party. Ferguson v. Bank of Dawson, 53 Ga. App. 309, 185 S.E. 602 (1936).

Employees of corporation are incompetent to serve as jurors if the corporation is a party. Ferguson v. Bank of Dawson, 53 Ga. App. 309, 185 S.E. 602 (1936).

Relation to an employee of the defendant corporation did not render a prospective juror incompetent to serve. Ford v. Saint Francis Hosp., 227 Ga. App. 823, 490 S.E.2d 415 (1997).

Working in same profession as defendant. — Business relationship with a defendant which can best be characterized as two professionals working in the same profession, rather than as a master-servant relationship, is not the type of relationship contemplated by subsection (a) of O.C.G.A. § 15-12-135 as disqualifying a prospective juror. Poulnott v. Surgical Assocs., 179 Ga. App. 138, 345 S.E.2d 639 (1986).

Questioning as to relationship to trade association. — In an action for personal injuries, if it appears on a private inquiry made by the court that the defendant is protected by a trade association against liability for injuries such as were sued for, it is not error for the court, in examining prospective jurors on their voir

Disqualifying Relationships (Cont'd)
3. Other Relationships (Cont'd)

dire, to inquire whether any juror is an employee of the association, or related to stockholders thereof. Atlanta Coca-Cola Bottling Co. v. Shipp, 41 Ga. App. 705, 154 S.E. 385 (1930).

Counsel for creator of party to litigation. — Trial court's refusal to excuse a juror for cause was error since the juror was counsel for the governing body of a governmental entity which created one of the parties for the purpose of meeting the entity's responsibility to provide health care to its citizens. Crumpton v. Kelly, 185 Ga. App. 245, 363 S.E.2d 799 (1987), cert. denied, 185 Ga. App. 909, 363 S.E.2d 799 (1988).

Relationship to insurance company. — When, on the trial of an action to recover damages for personal injuries it appears that the defendant carries liability insurance, and the plaintiff by timely motion requests the trial judge to qualify the jury by purging the panel of any and all persons who are employees of, stockholders in, or related to stockholders in the defendant's insurance carrier, it is error for the court to refuse the request. Rogers v. McKinley, 52 Ga. App. 161, 182 S.E. 805 (1935).

Stockholders of an insurance company which carries liability insurance indemnifying a party to an action from a judgment against the company in that case are interested in the result of the case and therefore are not qualified to serve as jurors. Shipman v. Johnson, 89 Ga. App. 620, 80 S.E.2d 717 (1954).

No presumption of harmful error arises in the refusal to qualify a jury as to their relationship with the insurers of the parties, regardless of whether the insurers are named parties, absent an affirmative showing that there is a strong probability that insurance companies that are not insurers of the parties to a suit have a direct, demonstrable financial stake in the outcome of the case. A financial interest in the outcome of a case cannot be established by simply alleging that non-insurers share a common "parent" corporation with an insurer. Wallace v. Swift Spinning Mills, Inc., 236 Ga. App. 613, 511 S.E.2d 904 (1999).

Insurance carrier with interest in outcome. — It is proper to qualify the jury relative to the possible interest which the members may have in an insurance carrier having a financial interest in the outcome of the suit. Crosby v. Spencer, 207 Ga. App. 487, 428 S.E.2d 607 (1993).

Challenges for cause properly denied. — Trial court did not err in not excluding three venirepersons for cause when one venireperson's sister-in-law had been formerly married to the victim's brother, when one venireperson's father was the elected county sheriff, and when another venireperson's mother was a victim-witness coordinator and his girlfriend an assistant district attorney; the defendant had not shown that any of them was biased or improperly related. Stokes v. State, 281 Ga. 825, 642 S.E.2d 82 (2007).

Trial court did not abuse the court's discretion when the court refused to strike a juror for cause because the juror could not be considered a party at interest but had, at most, an ongoing business relationship with the district attorney's office since the juror was only a consultant or contractor to the district attorney's office; the trial court was entitled to rely on the juror's responses to voir dire in determining qualifications. Berry v. State, 302 Ga. App. 31, 690 S.E.2d 428 (2010), cert. denied, No. S10C0825, 2010 Ga. LEXIS 459 (Ga. 2010).

Pleading and Practice

Hearsay evidence, if confined to general knowledge, is admissible to prove pedigree and relationship. Wynn v. State, 181 Ga. 660, 183 S.E. 923 (1935).

Issues of disqualification waived. — Defendant waived the right to argue on appeal that a prospective juror was disqualified from service and should have been struck for cause because the defendant never sought to have the juror dismissed for cause. Lewis v. State, 291 Ga. 273, 731 S.E.2d 51 (2012).

Disqualification waived if attorney knowing of disqualification fails to complain. — When parties are furnished with a list of jurors, it is their duty, if they know that any of the jurors are disquali-

fied, to call attention to the disqualification, or the disqualification will be held to have been waived and if the parties have reasonable grounds to suspect that any of jurors are disqualified, it is the parties' duty to call attention to the fact so that due inquiry may be made of the panel. Bean v. Barron, 176 Ga. 285, 168 S.E. 259 (1933).

When the defendant failed to argue that the trial court erred in excusing a prospective juror based on the juror's relationship by affinity to a co-defendant wife because the relationship was not sufficiently close to mandate disqualification under O.C.G.A. § 15-12-135, defendant waived the disqualification on appeal; further, an adoption of objections entered by the attorney, which occurred long after the juror was excused, did not save the claim. Mintz v. State, 273 Ga. App. 211, 615 S.E.2d 152 (2005).

Same waiver test applied to the defendant is applied to state in respect to a juror disqualified by reason of relationship to the accused. Brindle v. State, 125 Ga. App. 298, 187 S.E.2d 310 (1972).

By refusing to appear at trial, party waives right to object to qualifications of juror. Mull v. Taylor, 68 Ga. App. 663, 23 S.E.2d 595 (1942).

Concealment of disqualification to serve as juror abridges right of plaintiff to pursue lawful procedure in selection of jury, regardless of whether actual injury resulted or not. Shipman v. Johnson, 89 Ga. App. 620, 80 S.E.2d 717 (1954).

Party seeking to examine jury regarding disqualifying ties must be permitted to pose questions before verdict. — Party seeking to examine the jury regarding disqualifying ties to insurance companies must be permitted to pose the questions before the verdict, and an error in that regard cannot be cured or deemed harmless after verdict. Ford Motor Co. v. Conley, 294 Ga. 530, 757 S.E.2d 20 (2014).

Burden when attacking disqualified juror after verdict. — If, after verdict, a juror is attacked as being disqualified by reason of a relationship to the prosecutor, it is essential for the accused and the accused's counsel to establish that neither knew of the relationship, nor could the relationship have been discovered by the exercise of ordinary diligence, prior to the rendition of the verdict; and because the affidavit of counsel for the accused asserted that counsel had no such knowledge "before the case began to be tried," it does not meet this requirement. Otherwise there would be no showing that the relationship was not known, and could not have been known, during the time the trial was in progress. Williams v. State, 206 Ga. 107, 55 S.E.2d 589 (1949), for comment on Williams v. State, see 12 Ga. B.J. 326 (1950); Kennedy v. State, 88 Ga. App. 749, 77 S.E.2d 778 (1953); Brindle v. State, 125 Ga. App. 298, 187 S.E.2d 310 (1972).

If, after a verdict, a juror is attacked as being disqualified by reason of the juror's relationship to the plaintiff, it is essential for the movant and counsel to establish that neither knew of the relationship, nor could the relationship have been discerned by the exercise of ordinary diligence, for if either knew or had reason to suspect the relationship, and remained silent, the movant will be presumed to have waived the disqualification. Jennings v. Autry, 94 Ga. App. 344, 94 S.E.2d 629 (1956).

If a bank deposed a customer, who had filed a slip and fall action against the bank, four years before trial and when asked whether the customer had any relatives who might become jurors, the customer indicated that a spouse had some but the customer did not know their names, it was held that the bank was on notice that further investigation was required in order to avoid the issue of juror disqualification pursuant to O.C.G.A. § 15-12-135(a); accordingly, the denial of the bank's motion for a new trial pursuant to O.C.G.A. § 5-5-23, after the verdict was entered in favor of the customer, was properly denied because the bank could have avoided the issue of juror disqualification by use of ordinary diligence. Patterson Bank v. Gunter, 263 Ga. App. 424, 588 S.E.2d 270 (2003).

Defendants were not entitled to a new trial because of juror misconduct since the evidence supported the trial court's conclusion that the juror was not untruthful about the juror's relationship with the

Pleading and Practice (Cont'd)

victim since the juror was not even aware of the relationship with the victim, through her husband, at the time the juror answered the question; further, the trial court did not abuse the court's discretion in finding the defendants waived the matter of the juror disqualification because the defendants could have discovered the relationship between the juror and the victim by ordinary diligence since they shared the same last name. Dunbar v. State, 273 Ga. App. 29, 614 S.E.2d 472 (2005).

Failure of prosecutor to exercise diligence. — If the representative of the state fails to exercise ordinary diligence and therefore does not discern a juror's relationship to the defendant, the representative impliedly waives any cause for complaint by the state, in respect to which, once the accused has been put in jeopardy by the state, the trial judge cannot interfere by declaring a mistrial without the consent of the accused. Brindle v. State, 125 Ga. App. 298, 187 S.E.2d 310 (1972).

Harm to party must be shown. — If jurors who should have been disqualified are improperly allowed to serve, it must be shown that such ruling caused injury to the plaintiff in error or resulted in advantage to the state, and if it is not shown that the plaintiff in error exhausted plaintiff's strikes or that the state was benefited, it is not cause for a new trial. Smith v. State, 62 Ga. App. 494, 8 S.E.2d 663 (1940).

Disqualification of a juror will not result in the grant of a new trial unless it is shown that the movant was injured by such a disqualified juror's serving upon the jury or that the movant's opponent was benefited thereby. Jennings v. Autry, 94 Ga. App. 344, 94 S.E.2d 629 (1956).

Presumption of no harm if disqualification waived. — Disqualification of a juror may be expressly or impliedly waived, and if the disqualification be expressly or impliedly waived, it will be conclusively presumed that the movant was not harmed nor the movant's opponent benefited by such disqualification. Jennings v. Autry, 94 Ga. App. 344, 94 S.E.2d 629 (1956); Brindle v. State, 125 Ga. App. 298, 187 S.E.2d 310 (1972).

Whether attorneys have knowledge of relationship is a question of fact. — It is a question of fact to be determined by the trial judge as to whether the attorneys for the defendant have knowledge of the relationship between two jurors and the plaintiff's attorneys and also as to whether such knowledge, though previously and independently acquired, is still in the minds of the defendant's attorneys at the time of the trial so as to be imputed to the defendant at the time of selecting the jury or before the verdict is returned. Bean v. Barron, 176 Ga. 285, 168 S.E. 259 (1933).

Trial court acted within the court's discretion in excusing for cause a juror related to the defendant, even though the extent of that relationship was not known, since there was no showing that a competent and unbiased jury was not selected. Wells v. State, 261 Ga. 282, 404 S.E.2d 106 (1991).

Trial court did not abuse court's discretion in granting motion for new trial. — Trial court did not abuse its discretion in granting plaintiffs' extraordinary motion for new trial based on an auto company's misleading discovery responses with regard to liability insurance because they acted with due diligence to raise their claim that the jury should have been qualified as to the auto company's insurers and the failure to do so raised an unrebutted presumption that they were materially harmed. Ford Motor Co. v. Conley, 294 Ga. 530, 757 S.E.2d 20 (2014).

No error in court not excusing jurors for cause. Hayes v. State, 261 Ga. 439, 405 S.E.2d 660 (1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 254 et seq.

C.J.S. — 50A C.J.S., Juries, §§ 381, 382.

ALR. — Service on jury in prosecution for selling intoxicating liquor as disqualification as juror in similar case, 3 ALR 1206.

Disqualifying relationship by affinity in case of judge or juror as affected by dissolution of marriage, 117 ALR 800.

Disqualification of judge who presided at trial or of juror as ground of habeas corpus, 124 ALR 1079.

Juror's relationship to witness, in civil case, as ground of disqualification or for reversal or new trial, 85 ALR2d 851.

Disclosure in criminal case of juror's political, racial, religious, or national origin prejudice against accused or witnesses as ground for new trial or reversal, 91 ALR2d 1120.

Social or business relationship between proposed juror and nonparty witness as affecting former's qualification as juror, 11 ALR3d 859.

Juror's voir dire denial or nondisclosure of acquaintance or relationship with attorney in case, or with partner or associate of such attorney, as ground for new trial or mistrial, 64 ALR3d 126.

Competency of juror as affected by his membership in co-operative association interested in the case, 69 ALR3d 1296.

Similarity of occupation between proposed juror and alleged victim of crime as affecting juror's competency, 71 ALR3d 974.

Professional or business relations between proposed juror and attorney as ground for challenge for cause, 52 ALR4th 964.

Fact that juror in criminal case, or juror's relative or friend, has previously been victim of criminal incident as ground of disqualification, 65 ALR4th 743.

15-12-136. Competency of county residents when county is interested in case.

All inhabitants of a county who are competent jurors in other cases shall be competent jurors in any case in which the county is a party or is interested in its capacity as a corporation or a quasi-corporation. (Orig. Code 1863, § 463; Code 1868, § 525; Code 1873, § 491; Code 1882, § 491; Penal Code 1895, § 876; Penal Code 1910, § 881; Code 1933, § 59-714.)

JUDICIAL DECISIONS

Status as inhabitant, citizen, resident, homeowner, or taxpayer. — Juror not rendered incompetent by status as inhabitant, citizen, resident, homeowner, and/or taxpayer of county when that county is party to action. Hickox v. State, 138 Ga. App. 882, 227 S.E.2d 829 (1976).

Members of electric membership corporation. — It does not follow that a similar exception, like that provided by O.C.G.A. §§ 15-12-136 and 15-12-137 to the rule precluding service by jurors with a stake in the outcome of a case, exists for members of electric membership corporations. Indeed, the absence of a similar statute applicable to electric membership corporations' members would appear to be authority for a conclusion that no such exception exists. Thompson v. Sawnee Elec. Membership Corp., 157 Ga. App. 561, 278 S.E.2d 143 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 275.

C.J.S. — 50A C.J.S., Juries, §§ 266, 267.

ALR. — Disqualification, as jurors, of residents or taxpayers of litigating political subdivision, in absence of specific controlling statute, 81 ALR2d 708.

Similarity of occupation between proposed juror and alleged victim of crime as affecting juror's competency, 71 ALR3d 974.

15-12-137. Competency of resident of municipal corporation interested in case.

Being a citizen or resident of a municipal corporation shall not render a person incompetent to serve as a juror in cases in which the municipal corporation is a party or is interested. (Ga. L. 1874, p. 45, § 1; Ga. L. 1875, p. 96, §§ 1, 2; Code 1882, § 1672f; Civil Code 1895, § 754; Penal Code 1895, § 877; Civil Code 1910, § 903; Penal Code 1910, § 882; Code 1933, § 59-715.)

JUDICIAL DECISIONS

Status as inhabitant, citizen, resident, homeowner, or taxpayer. — Juror not rendered incompetent by status as inhabitant, citizen, resident, homeowner, and/or taxpayer of city when that city is a party to an action. Hickox v. State, 138 Ga. App. 882, 227 S.E.2d 829 (1976).

Citizen or resident of a municipal corporation, if otherwise competent to serve, is not incompetent to serve as a juror in a case in which that municipal corporation is a party or is interested. Claxton Poultry Co. v. City of Claxton, 155 Ga. App. 308, 271 S.E.2d 227 (1980).

Fact that fines and forfeitures arising in city court are payable to educational fund of city does not disqualify citizens of the city from serving as jurors in that court. Letson v. State, 7 Ga. App. 745, 68 S.E. 60 (1910).

Members of electric membership corporation. — It does not follow that a similar exception, like that provided by O.C.G.A. §§ 15-12-136 and 15-12-137 to the rule precluding service by jurors with a stake in the outcome of a case, exists for members of electric membership corporations. Indeed, the absence of a similar statute applicable to electric membership corporations members would appear to be authority for a conclusion that no such exception exists. Thompson v. Sawnee Elec. Membership Corp., 157 Ga. App. 561, 278 S.E.2d 143 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 102, 109.

C.J.S. — 50A C.J.S., Juries, § 380.

ALR. — Disqualification, as jurors, of residents or taxpayers of litigating political subdivision, in absence of specific controlling statute, 81 ALR2d 708.

15-12-137.1. Jury service by members of electric membership corporation.

A member of an electric membership corporation shall not be incompetent, based solely on such membership, to serve as a juror in a case in which the electric membership corporation is a party or is interested; provided, however, that if the judge in such case finds that the nature of the case or that the circumstances surrounding a potential juror's membership in an electric membership corporation may cause a potential juror to have a bias or prejudice for or against the electric membership corporation in that case, the judge may grant a party's

motion to disqualify such member for cause. (Code 1981, § 15-12-137.1, enacted by Ga. L. 2009, p. 641, § 1/HB 195.)

Law reviews. — For annual survey on trial practice and procedure, see 61 Mercer L. Rev. 363 (2009).

15-12-138. Oath of jury panel.

Each panel of the trial jury shall take the following oath:

"You shall well and truly try each case submitted to you during the present term and a true verdict give, according to the law as given you in charge and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either party, provided you are not discharged from the consideration of the case submitted. So help you God."

(Orig. Code 1863, §§ 3834, 3838; Code 1868, §§ 3855, 3860; Ga. L. 1869, p. 139, § 6; Code 1873, §§ 3927, 3933; Code 1882, §§ 3927, 3933; Penal Code 1895, § 856; Penal Code 1910, § 860; Code 1933, § 59-706.)

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Return of verdict. — In all civil cases, the jury is required to return a verdict according to law as given to the jury in the charge by the court. Eiberger v. Martel Elec. Sales, Inc., 125 Ga. App. 253, 187 S.E.2d 327 (1972).

Jury is not responsible for consequences of the jury's verdict, but is responsible for the truth of the jury's verdict. McFall v. State, 101 Ga. App. 44, 112 S.E.2d 691 (1960).

Oath in criminal cases. — Former Penal Code 1895, § 979 (see now O.C.G.A. § 15-12-139) and not former Penal Code 1895, § 856 (see now O.C.G.A. § 15-12-138) prescribed the oath in criminal cases. Taylor v. State, 121 Ga. 348, 49 S.E. 303 (1904); Merritt v. State, 152 Ga. 405, 110 S.E. 160 (1921).

Jurors are under oath pending entire proceeding of trial including publication of the verdict. Pan-American Wall Paper & Paint Co. v. Tudor, 81 Ga. App. 417, 59 S.E.2d 12 (1950).

Oath need not be made before motion. — In a civil case, there can be no procedural requirement that a Batson motion (motion under Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986)) be made prior to the trial jury being sworn because no statute requires the administration of a separate oath subsequent to selection of a trial jury in a civil action. Strozier v. Clark, 206 Ga. App. 85, 424 S.E.2d 368 (1992).

Oath need not be administered to jurors one at a time. Williams v. State, 31 Ga. App. 173, 120 S.E. 131 (1923).

Objection after verdict to form of oath will be denied. Candler v. Hammond, 23 Ga. 493 (1857).

Timeliness of jury selection challenge for discrimination. — Challenges to the alleged use of racially discriminatory peremptory challenges in a civil trial should be raised no later than would preserve the opportunity to correct any violation without resetting the trial, and because challenges brought before the administration of the oath to a jury panel may be premature, a challenge brought after the jury was selected and certain members released was made relatively, and permissively, promptly within the course of the proceedings. Calhoun v. Purvis, 206 Ga. App. 565, 425 S.E.2d 901 (1992).

Cited in Werk v. Big Bunker Hill Min-

ing Corp., 193 Ga. 217, 17 S.E.2d 825 (1941); Grasham v. Southern Ry., 111 Ga. App. 158, 141 S.E.2d 189 (1965); Barner v. State, 139 Ga. App. 50, 227 S.E.2d 874 (1976); Gober v. State, 247 Ga. 652, 278 S.E.2d 386 (1981); Gilreath v. State, 247 Ga. 744, 279 S.E.2d 650 (1981); Aldridge v. State, 158 Ga. App. 719, 282 S.E.2d 189 (1981); Taylor v. State, 264 Ga. App. 665, 592 S.E.2d 148 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 191 et seq.

C.J.S. — 50A C.J.S., Juries, § 520.

15-12-139. Oath in criminal case.

In all criminal cases, the following oath shall be administered to the trial jury:

> "You shall well and truly try the issue formed upon this bill of indictment (or accusation) between the State of Georgia and (name of accused), who is charged with (here state the crime or offense), and a true verdict give according to the evidence. So help you God."

The judge or clerk shall administer the oath to the jurors. (Laws 1833, Cobb's 1851 Digest, p. 836; Code 1863, § 4536; Code 1868, § 4556; Code 1873, § 4650; Code 1882, § 4650; Penal Code 1895, § 979; Penal Code 1910, § 1005; Code 1933, § 59-709; Ga. L. 1978, p. 910, § 1; Ga. L. 2011, p. 59, § 1-54/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Analysis

General Consideration
Method
Timing
Other

General Consideration

Former Penal Code 1895, § 979 (see now O.C.G.A. § 15-12-139) prescribed oath for jurors in criminal cases, while former Penal Code 1895, § 856 (see now O.C.G.A. § 15-12-138) applied to civil cases. Taylor v. State, 121 Ga. 348, 49 S.E. 303 (1904); Hill v. State, 237 Ga. 794, 229 S.E.2d 737 (1976).

Oath prescribed in this section is the only oath designed for jurors in criminal cases. Loomis v. State, 78 Ga. App. 153, 51 S.E.2d 13 (1948).

Oath is presumed legal. Hammond v. Candler, 22 Ga. 281 (1857).

Objection to oath. — If oath deviates from one prescribed, the defendant should object and acquiescences until after the verdict is a waiver of the objection. Smith v. State, 63 Ga. 168 (1879); Slaughter v. State, 100 Ga. 323, 28 S.E. 159 (1897).

Oath may not be waived. — Failure to administer any oath cannot be waived. Slaughter v. State, 100 Ga. 323, 28 S.E. 159 (1897).

In a criminal case, a total failure to swear the jury to try the particular case is

a matter which cannot, in any manner or under any circumstances, be waived. Culpepper v. State, 132 Ga. App. 733, 209 S.E.2d 18 (1974).

Conviction by an unsworn jury is a nullity and a defendant may not waive the failure to administer the oath even if the defendant failed to object. Keller v. State, 261 Ga. App. 769, 583 S.E.2d 591 (2003).

Lack of record that oath administered. — Mere fact that record does not show whether or not the oath was administered is not sufficient to constitute reversible error. Copeland v. State, 139 Ga. App. 55, 227 S.E.2d 850 (1976).

When the record did not indicate whether the jury had been sworn or not, the matter had to be remanded for completion of the record on this point. Keller v. State, 261 Ga. App. 769, 583 S.E.2d 591 (2003).

On appeal from a stalking conviction, because the record failed to show that the oath was not administered to the jury, no reversible error existed, and the appeals court had to presume that the jury was sworn. Benton v. State, 286 Ga. App. 736, 649 S.E.2d 793 (2007), cert. denied, 2007 Ga. LEXIS 753 (Ga. 2007).

Although the defendant complained that the record did not reflect whether the jury was sworn pursuant to O.C.G.A. § 15-12-139, which required that the judge or clerk of court administer the oath to the trial jury in every criminal case, the Georgia courts had consistently held that the failure of the record to reflect whether the jury was sworn did not constitute reversible error. A fear that the oath may not have been given had to be met with the rule that, unless shown otherwise, the trial court was presumed to have followed the law. Bynum v. State, 300 Ga. App. 163, 684 S.E.2d 330 (2009), cert. denied, No. S10C0225, 2010 Ga. LEXIS 300 (Ga. 2010).

Trial court properly concluded that the O.C.G.A. § 5-6-41(f) hearing was held and that the O.C.G.A. § 15-12-139 oath was properly administered when: (1) the defendant did not move to correct the record; (2) unless otherwise shown, the trial court was presumed to have followed the law; (3) although the defendant initially made that objection at the hearing on the motion for new trial, the defendant subsequently acquiesced in the trial court's hearing of the issue at that time, and was granted the opportunity for a second hearing, at which the defendant presented an additional witness; and (4) the trial court credited the prosecutor's distinct memory that the trial court did, in fact, swear the jury. Hill v. State, 291 Ga. 160, 728 S.E.2d 225 (2012).

Failure to give oath not reversible absent prejudice and objection. — Absent any showing of actual prejudice, the Court of Appeals is not inclined to reverse a conviction because the voir dire was not conducted under oath if no objection was made below. Gober v. State, 247 Ga. 652, 278 S.E.2d 386 (1981).

Double jeopardy. — Retrial after a not guilty finding by an unsworn jury was not barred by the double jeopardy principles under both the U.S. and Georgia Constitutions as the jury lacked any authority to pass upon any of the issues at trial, and hence, could not make any determinations whatsoever as to the defendant's guilt or innocence. Spencer v. State, 281 Ga. 533, 640 S.E.2d 267, cert. denied, 551 U.S. 1103, 127 S. Ct. 2914, 168 L. Ed. 2d 243 (2007).

Cited in Taylor v. State, 44 Ga. App. 64, 160 S.E. 667 (1931); Burke v. State, 76 Ga. App. 612, 47 S.E.2d 116 (1948); Loomis v. State, 78 Ga. App. 153, 51 S.E.2d 13 (1948); Cadle v. State, 101 Ga. App. 175, 113 S.E.2d 180 (1960); Garrett v. State, 120 Ga. App. 611, 171 S.E.2d 772 (1969); Smith v. State, 235 Ga. 852, 221 S.E.2d 601 (1976); Aldridge v. State, 153 Ga. App. 744, 266 S.E.2d 513 (1980); Gilreath v. State, 247 Ga. 814, 279 S.E.2d 650 (1981); Pressley v. State, 158 Ga. App. 638, 281 S.E.2d 364 (1981); Ferguson v. State, 163 Ga. App. 171, 292 S.E.2d 87 (1982); Monteford v. State, 162 Ga. App. 491, 292 S.E.2d 93 (1982); Millis v. State, 196 Ga. App. 799, 397 S.E.2d 71 (1990); Calhoun v. Purvis, 206 Ga. App. 565, 425 S.E.2d 901 (1992).

Method

Evidence of oath's administration. — Stipulation by defendant's counsel that the jury had been sworn in was part of the record and affirmatively showed that the

Method (Cont'd)

oath was administered. Bevil v. State, 220 Ga. App. 1, 467 S.E.2d 586 (1996).

Swearing all jurors at once. — It is not error to administer oath to all jurors at once. Roberts v. State, 65 Ga. 430 (1880); Brown v. State, 141 Ga. 5, 80 S.E. 320 (1913).

Single oath administration in bifurcated proceeding. — In a bifurcated proceeding for malice murder and possession of a firearm by a convicted felon, since the trial court administered the prescribed oath to the jury prior to trial of the murder charge, instructing the jury that the purpose of the oath was "to try the issues of this case," the possession charge was tried immediately following the return of the guilty verdict on the murder charge, and the trial court did not discharge the jury at any time during the proceedings, there was no error. Booker v. State, 257 Ga. 37, 354 S.E.2d 425 (1987).

Jury properly sworn. — Record on appeal supported the finding that the trial court properly swore in the jury, and, thus, defendant's convictions could not be reversed on the ground that the jury was not properly sworn in. Keller v. State, 271 Ga. App. 79, 608 S.E.2d 697 (2004).

Reversal of the defendant's convictions was not required merely because the trial court did not swear in the jury until the jury had first given some preliminary instructions to the jury as the oath required by O.C.G.A. § 15-12-139 need only be administered to the jury prior to the presentation of any evidence. Thomas v. State, 282 Ga. App. 522, 639 S.E.2d 531 (2006).

At the close of the evidence, the trial court, realizing that the court had failed to administer the jury oath, administered the oath to the jurors and instructed the jurors that the oath applied to all of the proceedings. As the corrective measures taken by the trial court were sufficient to ensure a fair trial, and the defendant did not show prejudice, the error was harmless. Fedd v. State, 298 Ga. App. 508, 680 S.E.2d 453 (2009), cert. denied, No. S09C1776, 2009 Ga. LEXIS 793 (Ga. 2009).

Timing

Absent showing of actual prejudice, no reversible error in belated jury oath given after state presented case. — In the absence of a showing of actual prejudice, there was no reversible error in giving a belated jury oath under O.C.G.A. § 15-12-139 after the state's case but prior to the jury's deliberations, although the better practice would be to give the oath as soon as the jury was empaneled. Adams v. State, 286 Ga. 496, 690 S.E.2d 171 (2010).

Postponing swearing until full panel obtained. — It is not error to postpone swearing jurors until full panel is obtained. Roberts v. State, 65 Ga. 430 (1880); Brown v. State, 141 Ga. 5, 80 S.E. 320 (1913).

Oath to be administered prior to voir dire. — Use of the word "shall" in former Code 1933, §§ 59-704.1 and 59-709 (see now O.C.G.A. §§ 15-12-132 and 15-12-139) and the change in former Code 1933, § 59-709 to specify that the judge or clerk shall administer the oath to the jurors, indicated that the legislature intended that the judge was required to administer the oath to the jurors prior to voir dire examination. Ates v. State, 155 Ga. App. 97, 270 S.E.2d 455 (1980).

It was not reversible error when the trial court failed to administer the jury oath until after the first question was asked of the jury since the trial court then administered the oath and resumed questioning of the jury without repeating the first question; although this created an irregularity in the giving of the oath, there was not a total failure to administer the oath. Atkins v. State, 253 Ga. App. 169, 558 S.E.2d 755 (2002).

Oath given during opening statement. — Even though the oath was given during the prosecutor's opening statement, the court did not commit reversible error since no objection to the procedure was interposed and there was no showing of actual prejudice. Marshall v. State, 266 Ga. 304, 466 S.E.2d 567 (1996).

For decisions holding that swearing of jury may be postponed until after selection, see Smith v. State, 63 Ga. 168 (1879); Gamble v. State, 141 Ga. App. 304, 233 S.E.2d 264 (1977).

Batson motion required before jury is sworn. — In a criminal case, there is a procedural requirement that a Batson motion (motion under Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986)) be made subsequent to the selection of jurors but prior to the trial jury being sworn pursuant to O.C.G.A. § 15-12-139. Strozier v. Clark, 206 Ga. App. 85, 424 S.E.2d 368 (1992).

Other

Substitution of indictment permissible. — If on a prosecution for the offense of rape, after a plea of not guilty had been entered on an indictment, and after the voir dire questions had been propounded to a panel of 12 jurors, but before any of the jurors had been sworn in chief, the solicitor general (now district attorney) stated to the court that the clerk had handed to the solicitor general the wrong indictment, and that the solicitor general wished to withdraw the one on which such plea had been entered and to substitute a different indictment in which a different female was named as the "alleged victim," defendant's motion for mistrial was properly overruled, and the case taken to trial upon the substituted indictment. Fields v. State, 190 Ga. 642, 10 S.E.2d 33 (1940).

Charge to jury allowed jury to fulfill jury's responsibilities. — Defendant's trial counsel was not ineffective in failing to request that the trial court give preliminary instructions regarding the presumption of innocence, reasonable doubt, or the burden of proof, because these doctrines were presented in the trial court's charge at the close of evidence, as required by O.C.G.A. § 5-5-24(b), allowing the jury to fulfill the jury's responsibilities under O.C.G.A. § 15-12-139. Decapite v. State, 312 Ga. App. 832, 720 S.E.2d 297 (2011).

Pledge of Allegiance. — The United States of America did not prejudice a non-citizen defendant nor indicate that the jurors were pro-state; rather, a juror's willingness to recite the Pledge of Allegiance, with its reinforcement of the concepts of "liberty and justice for all," showed no bias, either for the state, or for one who was charged by the state with a crime, and, in fact, was more likely to remind a juror of his or her obligations in the pursuit of justice. Robles v. State, 277 Ga. 415, 589 S.E.2d 566 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 191 et seq.

C.J.S. — 50A C.J.S., Juries, § 520 et seq.

15-12-140. Oath of bailiffs.

The following oath shall be administered to all bailiffs on duty in any court in this state conducting a jury trial:

> "You shall take all juries committed to your charge to the jury room or some other private and convenient place designated by the court and you shall not allow the jurors to receive any books, papers, nourishment, or hydration other than water, or to use any electronic communication device except as directed and approved by the court. You shall make no communication with the jurors nor permit anyone to communicate with the jurors except as specifically authorized by the court. You shall discharge all other duties which may devolve upon you as bailiff to the best of your skill and power. So help you God."

(Laws 1831, Cobb's 1851 Digest, pp. 553, 554; Code 1863, § 5106; Code 1868, § 3857; Code 1873, § 3929; Code 1882, § 3929; Ga. L. 1887, p. 33,

§ 1; Civil Code 1895, § 4449; Penal Code 1895, § 878; Civil Code 1910, § 4990; Penal Code 1910, § 883; Code 1933, §§ 24-3201, 59-717; Ga. L. 2013, p. 775, § 1/HB 161.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

Cross references. — Selection of bailiffs by sheriff, § 15-6-35.

JUDICIAL DECISIONS

Term "bailiff" means person to whom some authority, care, guardianship, or jurisdiction is entrusted. Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956).

"Bailiff" does not refer to a separate and distinct "public officer." A court bailiff does not have any term of office as such court bailiff; the court bailiff acts only during the term at which the court bailiff is sworn; the court bailiff is not under bond as a court bailiff; and the court bailiff receives no commission as a court bailiff. Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956).

If deputy acting as bailiff had charge of jury without being sworn, new trial will be granted. Roberts v. State, 72 Ga. 673 (1884); Washington v. State, 138 Ga. 370, 75 S.E. 253 (1912).

Custody of jury during deliberations. — This section constitutes the only specific directions as to persons authorized to have custody of a jury during their deliberations. Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956).

Who may qualify as bailiff. — Sheriff, a deputy sheriff, a town marshal, and many other officers, officials, and citizens may properly take custody and control of a petit jury during their deliberations, but they must first be administered, and must take, the oath prescribed by this section. Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956).

Failure of bailiff to take oath prescribed is ground for grant of new trial. Meyers v. Clark, 100 Ga. App. 845, 112 S.E.2d 300 (1959).

Presumption that bailiff sworn. — If bailiffs take charge of juries there is a presumption that the bailiffs were sworn. Mere negative testimony of bailiff that the bailiff cannot recollect taking oath will not require finding that the bailiff did not do so. Jackson v. State, 152 Ga. 210, 108 S.E. 784 (1921).

Defendant bore the burden of showing affirmatively that bailiffs were not sworn in order to overcome the presumption that the bailiffs were regularly sworn, and defendant's affidavit that the defendant did not see the trial court swear the bailiffs during trial was not sufficient. Wilson v. State, 227 Ga. App. 59, 488 S.E.2d 121 (1997).

Fact that oath was not administered must affirmatively appear. Johnson v. State, 27 Ga. App. 679, 109 S.E. 526 (1921).

Communication with jury. — Bailiff is to make no communication to the jury and is to permit no one to communicate with the jury except by leave of court. Battle v. State, 234 Ga. 637, 217 S.E.2d 255 (1975).

Duty to ensure isolation of jury. — It is the duty of the bailiff under the bailiff's oath when juries have been sequestered to ensure at all times integrity of the jury's isolation and to prevent any untoward influence upon the jury which may influence the jury's decision and degrade an accused's constitutional right to a fair and impartial trial. Whitlock v. State, 230 Ga. 700, 198 S.E.2d 865 (1973).

Bailiff has duty to look after jury at all times and to remain awake with the jury at all times while the jurors are in the bailiff's care; the bailiff's failure to do so by leaving the jury and going to bed in a separate room constitutes such misconduct as to entitle the defendant to a new trial. Blount v. State, 214 Ga. 433, 105 S.E.2d 304 (1958); Edwards v. State, 214 Ga. 436, 105 S.E.2d 307 (1958).

Questions asked by jury. — If the bailiff reports to the court a question asked by the jury, the court may direct the bailiff to inform the jurors that the jurors would have to decide the case in accordance with the court's charge. Williams v.

Douglas County School Dist., 168 Ga. App. 368, 309 S.E.2d 386 (1983).

Communication from bailiff to jury. — If communication from bailiff to jury is shown, burden is on state to rebut presumption of harm. Testimonial evidence can be utilized to rebut presumption of harm. Battle v. State, 234 Ga. 637, 217 S.E.2d 255 (1975).

Fact that jurors are allowed to have drink other than water, without permission of trial judge, does not require new trial unless prejudicial. Burnett v. Doster, 144 Ga. App. 443, 241 S.E.2d 319 (1978).

State's witness may not enter jury room. — It is error for a state's witness, particularly the chief law enforcement officer of the county (i.e., the sheriff), to enter the jury room while the jury room is occupied by the jurors empaneled to decide the case. McMichael v. State, 252 Ga. 305, 313 S.E.2d 693 (1984), overruling Daniel v. State, 187 Ga. 411, 1 S.E.2d 6 (1939).

Improper bailiff and juror communication requires new trial. — Since defendant's counsel proved an improper communication between the bailiff and a juror, and the state did nothing to rebut the presumed harm, the trial court erred in not granting a new trial. Mercer v. State, 169 Ga. App. 723, 314 S.E.2d 729 (1984).

Telephone calls by jurors. — If an affidavit, unrebutted, demands a conclusion that jurors called out on the telephone in the jury room and that three or four incoming calls were received, and nothing is said about the subject matter of the calls, this is at least prima facie harmful to the defendant so as to demand a reversal of the case. Wellmaker v. State, 124 Ga. App. 37, 183 S.E.2d 62 (1971).

Cited in Broughton v. State, 186 Ga. 588, 199 S.E. 111 (1938); Smith v. State, 218 Ga. 216, 126 S.E.2d 789 (1962); National Life & Accident Ins. Co. v. Fender, 144 Ga. App. 6, 240 S.E.2d 555 (1977); Keen v. State, 164 Ga. App. 81, 296 S.E.2d 91 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Full time deputy sheriffs may serve as courtroom bailiffs. 1987 Op. Att'y Gen. No. U87-24.

RESEARCH REFERENCES

ALR. — Propriety and prejudicial effect, in criminal case, of placing jury in charge of officer who is a witness in the case, 38 ALR3d 1012.

15-12-141. Jury deliberation rooms; furnishing food and beverages.

The governing authority of each county shall provide facilities for the impaneling of juries and for their deliberations. Jury deliberation rooms shall ensure the privacy of the jurors and include space, furnishings, and facilities conducive to reaching a fair verdict. The deliberation rooms shall be safe and secure. To the extent feasible, juror facilities shall be arranged to minimize contact between jurors and parties, counsel, and the public. While the jury is deliberating, the presiding judge may direct them to be furnished with such food and nonalcoholic beverages as the judge shall think proper. (Laws 1831, Cobb's 1851 Digest, p. 554; Ga. L. 1859, p. 52, § 1; Code 1863, § 3851; Code 1868, § 3871; Code 1873, § 3947; Code 1882, § 3947; Ga. L.

1884-85, p. 43, § 1; Penal Code 1895, § 879; Penal Code 1910, § 884; Code 1933, § 59-718; Ga. L. 1995, p. 1292, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "impaneling" was substituted for "empaneling" in the first sentence.

JUDICIAL DECISIONS

Coercion of jury if judge stated that the jury must pay for meals if the jury had been out all night requires a new trial. Physioc v. Shea, 75 Ga. 466 (1885).

Refreshments are to be served at court direction only. O'Barr v. Alexander & Trammell, 37 Ga. 195 (1867).

Medicine is to be furnished. O'Shields v. State, 55 Ga. 696 (1876).

RESEARCH REFERENCES

ALR. — Use of intoxicating liquor by jurors: civil cases, 6 ALR3d 934.

Use of intoxicating liquor by jurors: criminal cases, 7 ALR3d 1040.

15-12-142. Separation and confinement.

(a) At any time during the trial of a civil or criminal case, except in capital cases, either before or during jury deliberation, the judge may, in his discretion, allow the jury to be separated and the members thereof to be dispersed under appropriate instructions.

(b) Where during the trial of a civil or criminal case it is necessary to hold and confine the jury overnight under supervision of court officers, the court may, in its discretion, require or permit the segregation of the jurors according to age or sex, or both, under such circumstances as the court deems necessary and proper. (Code 1933, § 59-719, enacted by Ga. L. 1955, p. 248, § 1; Code 1933, § 59-718.1, enacted by Ga. L. 1972, p. 622, § 1.)

Law reviews. — For survey of cases dealing with criminal law and criminal procedure from June 1, 1977 through May 1978, see 30 Mercer L. Rev. 27 (1978). For annual survey of death penalty decisions, see 57 Mercer L. Rev. 139 (2005); 58 Mercer L. Rev. 111 (2006).

JUDICIAL DECISIONS

In murder trial, if the state does not seek death penalty it is not error to allow the jury to disperse with appropriate instructions. Dean v. State, 238 Ga. 537, 233 S.E.2d 789 (1977); Cook v. State, 242 Ga. 657, 251 S.E.2d 230 (1978); Whitaker v. State, 246 Ga. 163, 269 S.E.2d 436 (1980).

Sequestration in capital cases. — Jurors are required to be sequestered in capital cases after their selection to hear the case. Willis v. State, 243 Ga. 185, 253 S.E.2d 70, cert. denied, 444 U.S. 885, 100 S. Ct. 178, 62 L. Ed. 2d 116 (1979).

Trial court's sequestration of the jury in the capital murder case despite defendant's request that the jury not be sequestered under O.C.G.A. § 15-12-142(a) fell squarely within the court's discretion. Lewis v. State, 279 Ga. 756, 620 S.E.2d 778 (2005), cert. denied, 547 U.S. 1116, 126 S. Ct. 1917, 164 L. Ed. 2d 671 (2006).

Capital defendant's trial counsel was not ineffective for failing to seek sequestration of the jury under O.C.G.A. § 15-12-142; counsel's strategy was that allowing dispersal of the jury would give the jurors a more diverse perspective on the evidence, increasing the likelihood of a hung jury or an acquittal, and this strategy was not unreasonable. Williams v. State, 286 Ga. 884, 692 S.E.2d 374 (2010).

Sequestration in noncapital cases. — Trial court does not abuse the court's discretion in failing to sequester a jury in a noncapital case when the court instructed the jury not to discuss the case among themselves or with others during trial recesses. Morgan v. State, 276 Ga. 72, 575 S.E.2d 468 (2003).

Trial court did not abuse the court's discretion in failing to sequester a jury in a noncapital case after the court instructed the jury not to discuss the case among themselves or with others during trial recesses. Fox v. State, 266 Ga. App. 307, 596 S.E.2d 773 (2004).

Discretion of court to disperse jury in capital cases. — Discretion of the trial court to disperse the jury only if the death sentence may be imposed is removed. Brinks v. State, 232 Ga. 13, 205 S.E.2d 247 (1974).

This section does not prevent dispersal of a jury in a capital case with consent of the defendant. Mason v. State, 239 Ga. 538, 238 S.E.2d 79 (1977).

This section gives the trial court discretion to permit members of the jury to disperse under appropriate instruction except in cases in which the prosecution is seeking the death penalty and even if the prosecution is seeking the death penalty, the trial court may permit jury dispersal with the consent of the accused. Jones v. State, 243 Ga. 820, 256 S.E.2d 907, cert. denied, 444 U.S. 957, 100 S. Ct. 437, 62 L. Ed. 2d 329 (1979).

Whenever union and isolation of jury have been broken there arises presumption that defendant has been injured, and it is incumbent upon the state to have rebutted that legal presumption, not only by evidence that the juror did not speak to anyone personally, nor did anyone speak to the juror about the case, but that the juror did not hear anyone express any opinion in relation to the case. Legare v. State, 243 Ga. 744, 257 S.E.2d 247, cert. denied, 444 U.S. 984, 100 S. Ct. 491, 62 L. Ed. 2d 413 (1979).

Even if the sequestration of death penalty jurors is not mandatory, if a defendant gives his or her consent for the jury to be dispersed during trial, a trial court is clearly authorized by O.C.G.A. § 15-12-142(a) to maintain jury sequestration over a death penalty defendant's objection. Lamar v. State, 278 Ga. 150, 598 S.E.2d 488 (2004).

Location of place of sequestration. — In a prosecution for malice murder, the fact that the jurors were sequestered at a motel located only a short distance from the motel in which the crimes took place was not error since no alternative housing options were available and neither impropriety nor prejudice was demonstrated. Burgess v. State, 264 Ga. 777, 450 S.E.2d 680 (1994), cert. denied, 515 U.S. 1133, 115 S. Ct. 2559, 132 L. Ed. 2d 813 (1995).

Prosecutorial misconduct not shown. — In denying the defendant's motion to bar the second prosecution, the trial court observed that during the first trial the prosecutor: (1) may have misrepresented the extent of the prosecutor's communications with the state crime lab witness; and (2) may have violated the spirit of the rule of sequestration when the prosecutor advised the arresting officer of the evidentiary dilemma presented by the absence of the state crime lab witness. However, the court concluded that the prosecutor's actions did not rise to the level of prosecutorial misconduct intended to subvert the double jeopardy clause; under the circumstances of this case, the trial court did not abuse the court's discretion in denying the motion to bar the prosecution. Harris v. State, 212 Ga. App. 120, 441 S.E.2d 255 (1994).

Cited in Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956); White v. State, 230 Ga. 327, 196 S.E.2d 849 (1973); Brinks v. State, 232 Ga. 13, 205 S.E.2d 247 (1974); Edwards v. State, 235 Ga. 603, 221 S.E.2d 28 (1975); Jordan v. State, 235 Ga. 732, 222 S.E.2d 23 (1975); Baker v. State, 137 Ga. App. 33, 222 S.E.2d 865 (1975); Anderson v. State, 138 Ga. App. 871, 227 S.E.2d 783 (1976); Perault v. State, 162

Ga. App. 264, 291 S.E.2d 122 (1982); Bailey v. State, 249 Ga. 535, 291 S.E.2d 704 (1982); R.W. Page Corp. v. Lumpkin, 249 Ga. 576, 292 S.E.2d 815 (1982); Roper v. State, 251 Ga. 95, 303 S.E.2d 103 (1983); Benton v. State, 184 Ga. App. 684, 362 S.E.2d 421 (1987); Peppers v. State, 261 Ga. 338, 404 S.E.2d 788 (1991); Colantuno v. State, 262 Ga. 830, 426 S.E.2d 563 (1993); Edwards v. State, 224 Ga. App. 14, 479 S.E.2d 754 (1996); Bergeson v. State, 272 Ga. 382, 530 S.E.2d 190 (2000).

RESEARCH REFERENCES

ALR. — Separation of jury in criminal case, 34 ALR 1115; 79 ALR 821; 21 ALR2d 1088.

Separation of members of mixed jury of men and women, 71 ALR 68.

Time jury may or must be kept together upon disagreement in civil case, 164 ALR 1265.

Separation of jury in criminal case, 21 ALR2d 1088.

Permitting jurors to attend theater or the like during course of criminal trial as ground for mistrial, new trial, or reversal, 33 ALR2d 847.

Separation or dispersal of jury in civil case after submission, 77 ALR2d 1086.

Time jury may be kept together on disagreement in criminal case, 93 ALR2d 627.

Taking and use of trial notes by jury, 4 ALR3d 831.

Separation of jury in criminal case before introduction of evidence — modern cases, 72 ALR3d 100.

Separation of jury in criminal case during trial — modern cases, 72 ALR3d 131.

Separation of jury in criminal case after submission of cause — modern cases, 72 ALR3d 248.

Criminal law: propriety of reassembling jury to amend, correct, clarify, or otherwise change verdict after jury has been discharged, or has reached or sealed its verdict and separated, 14 ALR5th 89.

Part 2

Juries in Felony Cases

Cross references. — Provision that jury in criminal case shall be judge of law and fact, Ga. Const. 1983, Art. I, Sec. I, Para. XI and § 17-9-2.

JUDICIAL DECISIONS

Challenges are of two types: (1) challenges to the "array", i.e., challenges to the panels as a whole; and (2) challenges to the "poll", i.e., challenges to individual jurors. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981).

RESEARCH REFERENCES

C.J.S. — 50A C.J.S., Juries, §§ 352, 514.

ALR. — Permitting or refusing to permit jury in criminal case to examine or take into jury room the indictment or information or other pleading or copy thereof, 120 ALR 463.

Propriety of substituting juror in bifurcated state trial after end of first phase and before second phase is given to jury, 89 ALR4th 423.

15-12-160. Required panel of jurors in felony trial; summoning prospective jurors when necessary.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-55/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1855-56, p. 229, § 3; Code 1863, § 4564; Ga. L. 1865-66, p. 235, § 1; Code 1868, § 4584; Ga. L. 1869, p. 139, §§ 9, 10; Ga. L. 1871-72, p. 42, § 1; Code 1873, §§ 3935, 4678; Ga. L. 1880-81, p. 120, § 1; Code 1882, §§ 3935, 4678; Ga. L. 1889, p. 118, § 1; Penal Code 1895, §§ 858, 859, 970; Penal Code 1910, §§ 862, 863, 996; Code 1933, § 59-801; Ga. L. 1937, p. 466, § 2; Ga. L. 1973, p. 286, § 1; Ga. L. 1992, p. 1981, § 1; Ga. L. 2005, p. 20, § 5/HB 170; Ga. L. 2011, p. 59, § 1-55/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-160.1. Impanelling jurors for criminal trials; choosing and summoning prospective jurors if necessary to fill panel.

On and after July 1, 2012, when any person stands indicted for a felony, the court shall have impaneled 30 jurors from which the defense and prosecution may strike jurors; provided, however, that in any case in which the state announces its intention to seek the death penalty, the court shall have impaneled 42 jurors from which the defense and state may strike jurors. If, for any reason, after striking from the panel there remain fewer than 12 qualified jurors to try the case, the clerk shall choose and cause to be summoned such numbers of persons who are competent prospective jurors as may be necessary to provide a full panel or successive panels. In making up the panel or successive panels, the clerk shall choose the names of prospective trial jurors in the same manner as prospective trial jurors are chosen and cause such persons to be summoned. (Code 1981, § 15-12-160.1, enacted by Ga. L. 2011, p. 59, § 1-56/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under Ga. L. 1855-56, p. 229, § 3; Code 1863, § 4564; Code 1868, § 4584; Code 1873, §§ 3935, 4678; Ga. L. 1880-81, p. 120, § 1; Code 1882, §§ 3935, 4678; Penal Code 1895, §§ 858, 859, 970; Penal Code 1910, §§ 862, 863, 996; Code 1933, § 59-801; and former O.C.G.A. § 15-12-160 are included in the annotations for this Code section.

Constitutionality of amendment reducing number of impaneled jurors. — Application of the 1992 amendment to former O.C.G.A. § 15-12-160 requiring the court to have 30, rather than 42, impaneled jurors from which the defense and prosecution may strike jurors did not violate the constitutional prohibition against ex post facto laws. Shuler v. State,

213 Ga. App. 790, 446 S.E.2d 225 (1994) (decided under former O.C.G.A. § 15-12-160).

Error to reduce panel over defendant's objection. — Trial court's decision to proceed with a panel of only 38 prospective jurors upon the agreement of the prosecutor to reduce the state's number of peremptory strikes but over the objection of the defendant was error, but if the defendant did not make a written challenge and did not exhaust defendant's peremptory strikes, the error was harmless. Bankston v. State, 169 Ga. App. 955, 315 S.E.2d 671 (1984) (decided under former O.C.G.A. § 15-12-160 and prior to 1992 amendment decreasing the number of jurors to be impaneled).

Remedy if panel lacking requisite number of jurors. — If the panel does not contain the requisite number of jurors, the sole remedy of the defendant is a challenge to the array and no other method of complaint as to the deficiency is open. Lysfjord v. State, 208 Ga. App. 811, 432 S.E.2d 247 (1993) (decided under former O.C.G.A. § 15-12-160).

Panel to which co-defendants entitled. — Joint murder trial of two defendants does not entitle the defendants to a panel of 96 (now 60) jurors from which to strike. Lynn v. State, 140 Ga. 387, 79 S.E. 29 (1913) (decided under former Penal Code 1910, §§ 862, 863, and 996).

Defendant was not entitled to 42 jurors in the array rather than 30 jurors as now provided; the right to additional jurors is not a substantive right and the defendant's challenge to the array was not in writing. Landrum v. State, 210 Ga. App. 275, 436 S.E.2d 40 (1993) (decided under former O.C.G.A. § 15-12-160).

Power of court to order in successive panels is unlimited. Cruce v. State, 59 Ga. 83 (1877) (decided under former Code 1873, §§ 3935 and 4678).

Two panels used to complete jury. — Trial court did not err in using two panels to complete the jury when 30 jurors were impaneled, from that 30, 11 were chosen for the trial, and, subsequently, defense counsel was allowed to voir dire a second panel to complete the jury. Thomas v. State, 249 Ga. App. 571, 549 S.E.2d 408 (2001) (decided under former O.C.G.A. § 15-12-160).

Jurors to be drawn or summoned. — Judge cannot direct the judge's clerk to include in the panel jurors who had served during the preceding week if such persons had not been either drawn by the judge or summoned by the sheriff. Bridges v. State, 103 Ga. 21, 29 S.E. 859 (1897) (decided under former Penal Code 1895, §§ 3935 and 4678).

Refusal to shuffle jury. — Trial court did not err by denying a defendant's request to shuffle the jury venire as nothing under Georgia law required the trial court to shuffle the jury venire. Thomason v. State, 281 Ga. 429, 637 S.E.2d 639 (2006) (decided under former O.C.G.A. § 15-12-160).

Many qualified persons may be summoned in advance to attend, so that tales jurors may be obtained with convenience. Cobb v. State, 27 Ga. 648 (1859) (decided under Ga. L. 1855-56, p. 229, § 3).

Additional names drawn if some jurors engaged. — Forty-eight (now 30) names shall be drawn to try felony cases, but if some of the jurors drawn are engaged, additional jurors may be drawn from the box, or tales jurors may be summoned. Kelly v. State, 14 Ga. App. 20, 80 S.E. 24 (1913) (decided under former Penal Code 1910, §§ 862, 863, and 996).

Jurors should not be drawn from grand jury box. Pollard v. State, 148 Ga. 447, 96 S.E. 997 (1918) (decided under former Penal Code 1910, §§ 862, 863, and 996).

Constitutional to excuse veniremen upon request. — When no violation of O.C.G.A. § 15-12-1, restricting exemptions from jury service, was shown and when the jury panels which were put upon the accused contained substantially more veniremen than required by former O.C.G.A. § 15-12-160, there was no denial of a fair trial despite the trial court's general policy of excusing veniremen upon request. Hall v. State, 254 Ga. 272, 328 S.E.2d 719 (1985) (decided under former OC.G.A. § 15-12-160).

Right to reject, not select. — Entitlement of a party extends only to a fair and impartial jury and includes the right to reject, not select. Rucker v. State, 135 Ga. App. 468, 218 S.E.2d 146 (1975), over-

ruled on other grounds, Keaton v. State, 253 Ga. 70, 316 S.E.2d 452 (1984) (decided under former Code 1933, § 59-801).

Jury not purged before selection process begins. — In felony cases, the question of the competency and impartiality of jurors is to be determined after the process of selecting the jury has been commenced. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934); Gossett v. State, 203 Ga. 692, 48 S.E.2d 71 (1948), appeal dismissed, 214 Ga. 840, 108 S.E.2d 272 (1959) (decided under former Code 1933, § 59-801).

In felony case, it is not error for the court to refuse a motion to purge the jury as to disqualification before beginning to select a jury for trial, the statutes on the subject as applied to felony cases being different from those in reference to civil and misdemeanor cases. Gossett v. State, 203 Ga. 692, 48 S.E.2d 71 (1948), appeal dismissed, 214 Ga. 840, 108 S.E.2d 272 (1959) (decided under former Code 1933, § 59-801).

Waiver of right to full panel occurs if prisoner fails to challenge array, but proceeds with the selection of the jury. Ivey v. State, 4 Ga. App. 828, 62 S.E. 565 (1908) (decided under former Penal Code 1895, §§ 858, 859, and 970).

Trial vitiated by disqualification of juror. — It is disqualification of juror, not refusal to make inquiry, which vitiates trial. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934) (decided under former Code 1933, § 59-801).

Out-of-court investigations not required. — Defendant in a felony case is not required to have made investigations out-of-court to determine whether the jurors are disqualified. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934) (decided under former O.C.G.A. § 15-12-160).

Challenge may not be raised after verdict. — If the sheriff, without the knowledge and consent of the movants, selected as jurors certain persons whose names were not drawn from the jury box as required, such a point cannot be successfully raised for the first time after the verdict. Thomasson v. Hudmon, 185 Ga. 753, 196 S.E. 462 (1938) (decided under former Code 1933, § 59-801).

Failure to challenge renders juror competent. — Juror, having deficiency propter defectum, may be rendered specially competent by failure of the parties to challenge. Lindsey v. State, 57 Ga. App. 158, 194 S.E. 833 (1938) (decided under former O.C.G.A. § 15-12-160).

Claim that juror was absent waived. — Claim that a juror was absent from jury selection was not supported by the record, and, to the extent the defendant failed to object to the absence, if any, of the juror and failed to file a written challenge to the array, this claim was waived, under O.C.G.A. § 15-12-162, and there was no error, under former O.C.G.A. § 15-12-160, as the record showed without dispute that the defendant was not denied a full panel of 30 qualified jurors from which 12 jurors were selected. Nelson v. State, 278 Ga. App. 548, 629 S.E.2d 410 (2006) (decided under former OC.G.A. § 15-12-160).

New trial denied. — If the exercise of due diligence would have enabled the accused and the accused's counsel to discover before the juror was accepted and sworn that the juror was one of the grand jurors who found the indictment against the defendant, the objection to the juror came too late, and the court did not err in overruling the motion for a new trial. Boatright v. State, 51 Ga. App. 80, 179 S.E. 740 (1935) (decided under former O.C.G.A. § 15-12-160).

Juror may be excused for business reasons if there are more present than needed to make a selection. Ellis v. State, 114 Ga. 36, 39 S.E. 881 (1901) (decided under former Penal Code 1895, §§ 858, 859 and 970).

Juror may be excused for unequivocal opposition to death penalty. — There is no error in excluding the jurors who state they would not impose the death penalty under any circumstances. Willis v. State, 243 Ga. 185, 253 S.E.2d 70, cert. denied, 444 U.S. 885, 100 S. Ct. 178, 62 L. Ed. 2d 116 (1979) (decided under former O.C.G.A. § 15-12-160).

Stricken juror not returnable to panel. — If a juror is on the original panel of 48 (now 30) jurors placed on the defendant, or on any successive panel, and the juror's name is stricken and another juror

placed thereon in the juror's stead, an objection may be made to the panel if the stricken juror is returned to the panel. Clifton v. State, 187 Ga. 502, 2 S.E.2d 102 (1939) (decided under former Code 1933, § 59-801).

Additional panels of 12 not required. — There is no requirement that the trial court summon additional prospective jurors in panels of 12, if there remain less than 12 qualified jurors after striking. Dale v. State, 198 Ga. App. 479, 402 S.E.2d 90 (1991) (decided under former O.C.G.A. § 15-12-160).

Refusal to strike unqualified juror harmful error. — Failure by a defendant to use all of the defendant's peremptory strikes does not render harmless a trial court's error in refusing to strike an unqualified juror. Harris v. State, 255 Ga. 464, 339 S.E.2d 712 (1986) (decided under former Code 1933, § 59-801).

Cited in Williams v. State, 116 Ga. 525, 42 S.E. 745 (1902) (decided under former Penal Code 1895, §§ 858, 859, 970); Whitworth v. State, 155 Ga. 395, 117 S.E. 450 (1923) (decided under former Penal Code 1910, §§ 862, 863, 996); Bennett v. State, 67 Ga. App. 384, 20 S.E.2d 193 (1942) (decided under former Code 1933, § 59-801); Reece v. State, 208 Ga. 165, 66 S.E.2d 133 (1951) (decided under former Code 1933, § 59-801); Summerour v. State, 85 Ga. App. 94, 68 S.E.2d 158 (1951) (decided under former Code 1933, § 59-801); Britten v. State, 221 Ga. 97, 143 S.E.2d 176 (1965) (decided under former Code 1933, § 59-801); Roach v. State, 221 Ga. 783, 147 S.E.2d 299 (1966) (decided under former Code 1933, § 59-801); Whippler v. Dutton, 391 F.2d 425 (5th Cir. 1968) (decided under former Code 1933, § 59-801); Cauley v. State, 130 Ga. App. 278, 203 S.E.2d 239 (1973) (decided under former Code 1933, § 59-801); Blankenship v. State, 247 Ga. 590, 280 S.E.2d 623 (1981) (decided under former Code 1933, § 59-801); Terry v. State, 160 Ga. App. 433, 287 S.E.2d 360 (1981) (decided under former O.C.G.A. § 15-12-160); Thompkins v. State, 181 Ga. App. 158, 351 S.E.2d 475 (1986) (decided under former Code 1933, § 59-801); Georgia v. McCollum, 505 U.S. 42, 112 S. Ct. 2348, 120 L. Ed. 2d 33 (1992) (decided under former O.C.G.A. § 15-12-160); Cannon v. State, 250 Ga. App. 777, 552 S.E.2d 922 (2001) (decided under former O.C.G.A. § 15-12-160).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 188.

C.J.S. — 50A C.J.S., Juries, §§ 256, 257, 366.

ALR. — Right to consent to trial of criminal case before less than twelve jurors; and effect of consent upon jurisdiction of court to proceed with less than twelve, 70 ALR 279; 105 ALR 1114.

Power of court to exclude from panel or venire for particular case all persons belonging to a class membership in which may be supposed to involve bias or prejudice, 105 ALR 1527.

Validity and effect of plan or practice of consulting preferences of persons eligible for jury service as regards periods or times of service or character of actions, 112 ALR 995.

Membership in secret order or organization for the suppression of crime as proper subject of examination, or ground of challenge, of juror, 158 ALR 1361.

15-12-161. Clerk to provide names of prospective jurors and identifying information to prosecutor and accused.

The clerk shall provide the prosecuting attorney and the accused with the names and identifying information relative to prospective jurors for the case being tried. (Ga. L. 1855-56, p. 229, § 4; Code 1863, § 4566; Code 1868, § 4586; Code 1873, § 4679; Code 1882, § 4679; Penal Code

1895, § 971; Penal Code 1910, § 997; Code 1933, § 59-802; Ga. L. 2011, p. 59, § 1-57/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Jurors must be legally impaneled. Cunneen v. State, 96 Ga. 406, 23 S.E. 412 (1895).

There is no particular ceremony or form of words required to put the jury upon the defendant when the panel of jurors is "put upon the accused." Walls v. State, 161 Ga. App. 235, 291 S.E.2d 15 (1982).

Putting on of panel may be waived expressly or by implication. Cochran v. State, 62 Ga. 731 (1879); Ruden v. State, 72 Ga. 567 (1884); Vaughn v. State, 88 Ga. 731, 16 S.E. 64 (1892).

Second panel of jurors is not required. Chewning v. State, 18 Ga. App. 11, 88 S.E. 904 (1916); Amerson v. State, 18 Ga. App. 176, 88 S.E. 998 (1916).

Time for challenge. — Challenge to an array must be made when the array is put upon the defendant. Mitchell v. Hopper, 538 F. Supp. 77 (S.D. Ga. 1982), supplemented by 564 F. Supp. 780 (S.D. Ga. 1983), aff'd in part, rev'd in part sub nom. Ross v. Kemp, 756 F.2d 1483 (11th Cir. 1985), aff'd in part sub nom. Mitchell v. Kemp, 762 F.2d 886 (11th Cir. 1985), rev'd in part sub nom. Spencer v. Kemp, 781 F.2d 1458 (11th Cir. 1986), cert. denied 483 U.S. 1026, 107 S. Ct. 3248, 97 L. Ed. 2d 774 (1987).

Defense that jury not properly put upon defendant. — Defendant may not, after conviction, urge defense that jury was not properly put upon the defendant. Cumming v. State, 155 Ga. 346, 117 S.E. 378 (1923).

Jury not purged before selection process begins. — In felony case, it is not error for the court to refuse a motion to purge the jury as to disqualification before beginning to select the jury for trial, the statutes on the subject as applied to felony cases being different from those in reference to civil and misdemeanor cases. Gossett v. State, 203 Ga. 692, 48 S.E.2d 71 (1948), appeal dismissed, 214 Ga. 840, 108 S.E.2d 272 (1959).

Excusals before voir dire held proper. — There was no merit to a defendant's claim that it was error to excuse two jurors before voir dire because the jurors happened to be part of the original panel of potential jurors and thus should have been "put upon" the defendant; a defendant was entitled to an array of properly drawn, impartial jurors to which the defendant could direct peremptory challenges, and the defendant had been afforded this right. Jackson v. State, 288 Ga. App. 339, 654 S.E.2d 137 (2007), cert. denied, 2008 Ga. LEXIS 332 (Ga. 2008).

Cited in Rawlings v. State, 163 Ga. 406, 136 S.E. 448 (1926); Felker v. Johnson, 53 Ga. App. 390, 186 S.E. 144 (1936); Williams v. State, 232 Ga. 203, 206 S.E.2d 37 (1974); Spencer v. Hopper, 243 Ga. 532, 255 S.E.2d 1 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 101 et seq.

15-12-162. Challenge to the array.

The accused may, in writing, challenge the array for any cause going to show that it was not fairly or properly impaneled or ought not to be

put upon him. The court shall determine the sufficiency of the challenge at once. If sustained, a new panel shall be ordered; if not sustained, the selection of jurors shall proceed. (Ga. L. 1855-56, p. 229, § 5; Code 1863, § 4567; Code 1868, § 4587; Code 1873, § 4680; Code 1882, § 4680; Penal Code 1895, § 972; Penal Code 1910, § 998; Code 1933, § 59-803.)

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General Consideration

Challenge at time of trial. — Composition of jury can be brought into issue by challenge to array at the time of trial. Georgia v. Birdsong, 428 F.2d 1223 (5th Cir. 1970).

Challenge to array is objection to all jurors collectively because of some defect in the panel as a whole. Bryan v. State, 124 Ga. 79, 52 S.E. 298 (1905).

Challenge to the poll is one peremptory or for cause addressed to an individual juror, while a challenge to the array is a challenge or objection to all of the jurors collectively because of some defect in the panel as a whole, such as, for example, that the names of the jurors were drawn from the grand jury box, or were not drawn in open court or some other reason running to the whole of the panel. Cauley v. State, 130 Ga. App. 278, 203 S.E.2d 239 (1973), cert. denied, 419 U.S. 877, 95 S. Ct. 140, 42 L. Ed. 2d 117 (1974).

Challenge to array differs from challenge to the poll, in that the latter is directed solely to an individual juror. Humphries v. State, 100 Ga. 260, 28 S.E. 25 (1897).

Rules regarding challenges to the array apply to both felony and misdemeanor cases. Thompson v. State, 109 Ga. 272, 34 S.E. 579 (1899); Whitworth v. State, 155 Ga. 395, 117 S.E. 450 (1923).

This section furnishes sole remedy for objecting to the entire panel. Ivey v. State, 4 Ga. App. 828, 62 S.E. 565 (1908); Williams v. State, 31 Ga. App. 173, 120 S.E. 131 (1923).

If the panel does not contain the requisite number of jurors when the panel is put upon the defendant, this section is defendant's sole remedy; defendant may challenge the array. Felker v. Johnson, 53 Ga. App. 390, 186 S.E. 144 (1936); Cauley v. State, 130 Ga. App. 278, 203 S.E.2d 239 (1973), cert. denied, 419 U.S. 877, 95 S. Ct. 140, 42 L. Ed. 2d 117 (1974).

Fair cross section requirement applicable to jury lists does not extend to ensure that the jury array itself likewise represents a fair cross section of the community to the fullest extent possible. Williams v. State, 213 Ga. App. 458, 444 S.E.2d 831 (1994).

Determination of census data to be used for jury array. — Defendant's fair cross-section challenge to the jury array, under the Sixth Amendment, was denied because the balancing of cognizable groups to match the then most recent Decennial Census, instead of a more recent U.S. Census Bureau's 2008 American Community Survey, was justified by a sufficiently-significant state interest. Greene v. State, 312 Ga. App. 666, 722 S.E.2d 77 (2011), cert. denied, No. S12C0516, 2012 Ga. LEXIS 670 (Ga. 2012).

No objection to array if challenge is to individual jury members. — If there is objection to individual members of the panel of jurors, the challenge should be to the poll, and not to the array. Thompson v. Buice, 162 Ga. 556, 134 S.E. 303 (1926).

Challenge confined to four jurors is not broad enough to vitiate array, although otherwise good. Blackman v. State, 80 Ga. 785, 7 S.E. 626 (1888), overruled on other grounds, Corbin v. State, 211 Ga. 400, 86 S.E.2d 221 (1955).

Defendant was not entitled to 42 jurors in the array rather than 30 jurors

as now provided; the right to additional jurors is not a substantive right and the defendant's challenge to the array was not in writing. Landrum v. State, 210 Ga. App. 275, 436 S.E.2d 40 (1993).

Cited in Harris v. State, 191 Ga. 243, 12 S.E.2d 64 (1940); Reece v. State, 208 Ga. 165, 66 S.E.2d 133 (1951); Heard v. State, 210 Ga. 523, 81 S.E.2d 467 (1954); Reece v. State, 211 Ga. 339, 85 S.E.2d 773 (1955); Vanleeward v. State, 220 Ga. 135, 137 S.E.2d 452 (1964); McGinnis v. State, 135 Ga. App. 843, 219 S.E.2d 485 (1975); Tuzman v. State, 145 Ga. App. 761, 244 S.E.2d 882 (1978); Spencer v. Hopper, 243 Ga. 532, 255 S.E.2d 1 (1979); Newby v. State, 161 Ga. App. 805, 288 S.E.2d 889 (1982); Walls v. State, 161 Ga. App. 235, 291 S.E.2d 15 (1982); Morgan v. Zant, 582 F. Supp. 1026 (S.D. Ga. 1984); Adams v. State, 180 Ga. App. 546, 349 S.E.2d 789 (1986); Guest v. State, 186 Ga. App. 318, 367 S.E.2d 105 (1988); Simmons v. State, 186 Ga. App. 886, 369 S.E.2d 36 (1988); Parrott v. State, 190 Ga. App. 784, 380 S.E.2d 343 (1989); Lancaster v. Newsome, 880 F.2d 362 (11th Cir. 1989); Edmonds v. State, 196 Ga. App. 190, 395 S.E.2d 566 (1990); Wells v. State, 243 Ga. App. 629, 534 S.E.2d 106 (2000).

Grounds for Challenge

Defendant is entitled to panel of qualified jurors not panel of preferred jurors. Smith v. State, 245 Ga. 205, 264 S.E.2d 15 (1980).

Defect which goes to legality of selection of the panel of jurors is ground for challenge to array. Carter v. State, 143 Ga. 632, 85 S.E. 884 (1915); Pollard v. State, 148 Ga. 447, 96 S.E. 997 (1918); Derryberry v. Higdon, 116 Ga. App. 381, 157 S.E.2d 559 (1967).

Challenge to array will be upheld if there has been unauthorized revision of jury lists. Thomas v. State, 27 Ga. 287 (1859); Carter v. State, 17 Ga. App. 90, 86 S.E. 287 (1915).

If sheriff was disqualified. — In regard to the action of a sheriff in summoning members of the jury, and in selecting bailiffs who served subpoenas upon the jury, if the sheriff was disqualified as alleged, then objection should have been made in the nature of a challenge to the array of jurors. Morakes v. State, 201 Ga. 425, 40 S.E.2d 120 (1946).

Irregularity in drawing not ground for challenge. — Irregularity in drawing which cannot affect right to trial by fair and impartial jury is not ground for challenge. McNeal v. State, 5 Ga. App. 368, 63 S.E. 224 (1908); Governor v. State, 5 Ga. App. 357, 63 S.E. 241 (1908); Worley v. State, 21 Ga. App. 787, 95 S.E. 304 (1918).

Mere fact of prior jury service not ground for challenge. Green v. State, 246 Ga. 598, 272 S.E.2d 475 (1980), cert. denied, 450 U.S. 936, 101 S. Ct. 1402, 67 L. Ed. 2d 372 (1981).

Screening those not compensated by employer not grounds or screening in such manner as to excuse persons who would not be compensated by their employer during jury service was not grounds for challenge. Butler v. State, 134 Ga. App. 131, 213 S.E.2d 490 (1975).

Mere fact that name of a juror was not on the jury list, when the point was raised for the first time after the verdict, and if the fact would constitute a valid ground of objection under any circumstances, it should have been raised by a challenge to the poll, and not to the array. Fudge v. State, 190 Ga. 340, 9 S.E.2d 259 (1940).

Defendant may appear without handcuffs. — Prisoner being tried for escape on a plea of not guilty is entitled to make an appearance free from handcuffs so long as there are no circumstances which dictate the use of that restraint. McKenzey v. State, 138 Ga. App. 88, 225 S.E.2d 512 (1976).

Handcuffs are not ground for challenge to array. — Mere fact that handcuffed defendant is seen by jurors or prospective jurors is not ground for automatic grant of challenge to the array of jurors or of mistrial. Carter v. State, 155 Ga. App. 840, 273 S.E.2d 417 (1980).

Challenge to array is improper method of contesting possible prejudice by jury member. Bias, if bias exists, may be discovered and properly disposed of by questions propounded on voir dire or by a challenge to the poll. Hill v. Dutton, 440 F.2d 34 (5th Cir.), cert. denied, 404 U.S. 845, 92 S. Ct. 145, 30 L. Ed. 2d 81 (1971).

Grounds for Challenge (Cont'd)

Prejudicial remark by judge. — Challenge to the poll is the proper procedure to be followed to disqualify jurors on the ground that the trial judge had made a prejudicial remark in the jurors presence. Cauley v. State, 130 Ga. App. 278, 203 S.E.2d 239 (1973), cert. denied, 419 U.S. 877, 95 S. Ct. 140, 42 L. Ed. 2d 117 (1974).

Striking all potential black jurors. — Prosecution's striking of all potential black jurors denied the defendant the right to a jury of defendant's peers and constituted reversible error. Mincey v. State, 180 Ga. App. 263, 349 S.E.2d 1 (1986), aff'd, 256 Ga. 636, 353 S.E.2d 814 (1987).

Statement by prospective juror that the juror co-owned robbed store. — Trial court did not err by refusing to grant a continuance so that another jury could be empaneled after a prospective juror answered the question propounded by the court as to whether any of the jurors knew the defendant by stating that the juror was the co-owner of the store that the defendant robbed. This answer did not link defendant to other criminal violations on defendant's part which were complete and separate from the offense for which defendant was being tried, and the other jurors indicated by their lack of response to the court's inquiry that they had not been affected by the remark, as well as by their verdict of guilty after specific direction to acquit the defendant if they had been influenced in any manner by the statement. Austin v. State, 180 Ga. App. 226, 348 S.E.2d 746 (1986).

Pleading and Practice

Time for challenge. — Challenge to an array must be made when the array is put upon the defendant. Mitchell v. Hopper, 538 F. Supp. 77 (S.D. Ga. 1982), supplemented by 564 F. Supp. 780 (S.D. Ga. 1983), aff'd in part, rev'd in part sub nom. Ross v. Kemp, 756 F.2d 1483 (11th Cir. 1985), aff'd in part sub nom. Mitchell v. Kemp, 762 F.2d 886 (11th Cir.), rev'd in part sub nom. Spencer v. Kemp, 781 F.2d 1458 (11th Cir. 1986), cert. denied, 483 U.S. 1026, 107 S. Ct. 3248, 97 L. Ed. 2d 774 (1987), 500 U.S. 960, 111 S. Ct. 2276, 114 L. Ed. 2d 727 (1991).

Under O.C.G.A. § 15-12-162, a criminal defendant must raise a challenge to the jury array at or before the time that the jury array is seated and voir dire commences, and the challenge must be in writing; defendant's challenge to the jury array was not preserved for appeal, and was meritless as the jury array was based on census data available at the time of the trial. Usher v. State, 258 Ga. App. 459, 574 S.E.2d 580 (2002).

Defendant's two oral challenges to the jury array for failure to include sufficient Latino jurors and defendant's written challenge all made after the jury had already been selected were untimely under O.C.G.A. § 15-12-162 and therefore could not be considered on appeal. Guzman v. State, 287 Ga. 759, 700 S.E.2d 340 (2010).

Challenge waived by failure to raise it. — Defendant who fails to raise challenge to array of the jury when panel is put upon defendant waives the challenge once and for all. Derryberry v. Higdon, 116 Ga. App. 381, 157 S.E.2d 559 (1967); Dixon v. Hopper, 407 F. Supp. 58 (M.D. Ga. 1976), overruled on other grounds, Jarrell v. Balkcom, 735 F.2d 1242 (11th Cir. Ga. 1984); Rogers v. State, 143 Ga. App. 306, 238 S.E.2d 245 (1977); Stewart v. Ricketts, 451 F. Supp. 911 (M.D. Ga. 1978).

If no question is raised as to the "make-up" of the jury until after the verdict, such contention is deemed to have been waived and the trial court does not err in denying the prisoner's prayers for relief based upon this ground. Moore v. Dutton, 223 Ga. 585, 157 S.E.2d 267 (1967).

Defendant's failure to comply with this state's procedural rule constituted a waiver of the defendant's right to challenge the jury composition in a federal habeas corpus proceeding. Smith v. Kemp, 715 F.2d 1459 (11th Cir. 1983).

Claim that a juror was absent from jury selection was not supported by the record, and, to the extent the defendant failed to object to the absence, if any, of the juror and failed to file a written challenge to the array, the claim was waived, under

O.C.G.A. § 15-12-162, and there was no error, under O.C.G.A. § 15-12-160, as the record showed without dispute that the defendant was not denied a full panel of 30 qualified jurors from which 12 jurors were selected. Nelson v. State, 278 Ga. App. 548, 629 S.E.2d 410 (2006).

Because defendant orally challenged jury array but refused to participate in voir dire or jury selection and failed to set forth any facts showing that the jury was not properly composed, the purported challenge was waived. Allen v. State, 273 Ga. App. 227, 614 S.E.2d 857 (2005).

Rulings on challenges not grounds for new trial. — Rulings on challenge to array of trial jurors cannot be properly asserted as grounds of motion for new trial. Hargroves v. State, 179 Ga. 722, 177 S.E. 561 (1934); Ivey v. State, 84 Ga. App. 72, 65 S.E.2d 282 (1951).

Appellant cannot raise challenges to the grand and traverse juries for the first time in appellant's motion for new trial. Griffin v. State, 245 Ga. 345, 265 S.E.2d 20 (1980).

Unless lack prior opportunity. — Challenge to the array may be raised by a new-trial motion or by a habeas corpus proceeding when the person accused was not afforded the opportunity to make appropriate objections before the indictment or during the progress of the trial. McKenzey v. State, 138 Ga. App. 88, 225 S.E.2d 512 (1976); Morgan v. State, 161 Ga. App. 484, 287 S.E.2d 739 (1982).

If the defendant orally challenged the array after voir dire, but before selection of the jury, and included the challenge in defendant's written motion for new trial, the defendant did not waive the defendant's challenge to the jury composition. Anthony v. State, 213 Ga. App. 303, 444 S.E.2d 393 (1994).

Statement of accused that the accused waived nothing is not a challenge to the array. Schumpert v. State, 9 Ga. App. 553, 71 S.E. 879 (1911).

Right to demand full panel lost when defendant merely selects jury. Ivey v. State, 4 Ga. App. 828, 62 S.E. 565 (1908).

Defendant has burden of showing jury discrimination in challenging the array. Estes v. State, 232 Ga. 703, 208 S.E.2d 806 (1974).

Motion must be in writing. — Challenge to the array, for any cause going to show that the array was not fairly or properly empaneled, must be in writing. Thompson v. Buice, 162 Ga. 556, 134 S.E. 303 (1926); Porch v. State, 207 Ga. 645, 63 S.E.2d 902, cert. denied, 341 U.S. 954, 71 S. Ct. 1005, 95 L. Ed. 1376 (1951); Smith v. State, 151 Ga. App. 697, 261 S.E.2d 439 (1979); Sexton v. State, 189 Ga. App. 12, 374 S.E.2d 824 (1988).

If a claim of systematic exclusion of women and blacks from the grand and petit juries is not asserted by a written challenge to the array, the trial court may properly overrule the motion for a change of venue. Coley v. State, 231 Ga. 829, 204 S.E.2d 612 (1974).

Under O.C.G.A. § 15-12-162, a challenge to the jury array must be in writing. Terrell v. State, 201 Ga. App. 628, 411 S.E.2d 779 (1991).

When defendant claimed that the alphabetical organization of the jury pool from which the defendant's jury was drawn resulted in an improper jury panel, the defendant did not assert this challenge in writing, as required, nor did the defendant show that there was any systematic exclusion of a cognizable group. Hernandez v. State, 274 Ga. App. 390, 617 S.E.2d 630 (2005).

In a federal habeas proceeding, an evidentiary hearing was necessary to determine whether the petitioner had satisfied the "cause and prejudice" requirements so as to exempt the petitioner from the operation of the state procedural waiver rule requiring a timely challenge to the composition of the jury, to establish that the constitutional defects in the jury composition were not reasonably discoverable by petitioner's counsel at the time of trial, and that the decision not to challenge the composition at that time was a deliberate bypass. Amadeo v. Kemp, 773 F.2d 1141 (11th Cir. 1985), rev'd on other grounds, 486 U.S. 214, 108 S. Ct. 1771, 100 L. Ed. 2d 249 (1988).

Defendant must challenge jury composition prior to voir dire. — Since a jury is "put upon" a defendant at the time that the jury array is seated and

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voir dire commences, in order to avoid waiving any right to challenge the composition of a jury on appeal, a defendant must raise such a challenge prior to the commencement of voir dire. Spencer v. Kemp, 781 F.2d 1458 (11th Cir. 1986), cert. denied, 500 U.S. 960, 111 S. Ct. 2276, 114 L. Ed. 2d 727 (1991).

Defense counsel's motion for a continuance on the basis that the district attorney's striking of all potential black jurors denied the defendant the right to a jury of defendant's peers was a sufficient method of challenging the jury array. Mincey v. State, 180 Ga. App. 263, 349 S.E.2d 1 (1986), aff'd, 256 Ga. 636, 353 S.E.2d 814 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 216 et seq., 280.

C.J.S. — 50A C.J.S., Juries, § 357 et seq.

ALR. — Effect of, and remedies for, exclusion of eligible class or classes of persons from jury list in criminal case, 52 ALR 919.

Proof as to exclusion of or discrimination against eligible class or race in respect to jury in criminal case, 1 ALR2d 1291.

Bias, prejudice, or conduct of individual member or members of jury panel as ground for challenge to array or to entire panel, 76 ALR2d 678.

Juror's presence at or participation in trial of criminal case (or related hearing) as ground of disqualification in subsequent criminal case involving same defendant, 6 ALR3d 519.

Propriety, on voir dire in criminal case, of inquiries as to juror's possible prejudice if informed of defendant's prior convictions, 43 ALR3d 1081.

15-12-163. Challenges for cause; hearing of evidence; when objection may be made.

(a) When each juror is called, he shall be presented to the accused in such a manner that he can be distinctly seen.

(b) The state or the accused may make any of the following objections to the juror:

(1) That the juror is not a citizen, resident in the county;

(2) That the juror is under 18 years of age;

(3) That the juror is incompetent to serve because of mental illness or intellectual disability, or that the juror is intoxicated;

(4) That the juror is so near of kin to the prosecutor, the accused, or the victim as to disqualify the juror by law from serving on the jury;

(5) That the juror has been convicted of a felony in a federal court or any court of a state of the United States and the juror's civil rights have not been restored; or

(6) That the juror is unable to communicate in the English language.

(c) It shall be the duty of the court to hear immediately such evidence as is submitted in relation to the truth of these objections; the juror shall be a competent witness for this purpose. If the judge is satisfied of the truth of any objection, the juror shall be set aside for cause. (Ga. L. 1855-56, p. 229, § 7; Code 1863, § 4568; Code 1868, § 4588; Code 1873, § 4681; Code 1882, § 4681; Penal Code 1895, § 973; Penal Code 1910, § 999; Code 1933, § 59-804; Ga. L. 1995, p. 1292, § 11; Ga. L. 2015, p. 385, § 4-15/HB 252.)

The 2015 amendment, effective July 1, 2015, substituted "intellectual disability" for "mental retardation" in the middle of paragraph (b)(3).

Law reviews. — For article, "Practitioner's Note Jury Selection: Whose Job Is It, Anyway?," see 23 Ga. St. U.L. Rev. 617 (2007). For annual survey of law on criminal law, see 62 Mercer L. Rev. 87 (2010).

JUDICIAL DECISIONS

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2. Disqualifying Relationships
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General Consideration

Degree of relationship to disqualify a juror set by § 15-12-135. — Ga. L. 1935, p. 396, § 1 (see now O.C.G.A. § 15-12-135) neither repealed nor amended former Code 1933, § 59-804 (see now O.C.G.A. § 15-12-163); it merely did what the Supreme Court, in the absence of any statutory law on the subject, had previously done, that was, establish the degree of relationship which would disqualify a juror, and former Code 1933, § 59-804 was still in full force and effect. Davis v. State, 204 Ga. 467, 50 S.E.2d 604 (1948).

Juror serving at earlier session incompetent. — Although service at a preceding court session rendered a juror ineligible, and thus incompetent, the juror's service was not grounds for a new trial, and the juror's service without challenge prevented the verdict from being set aside for cause. Jordan v. State, 119 Ga. 443, 46 S.E.2d 679 (1904).

Section applicable only in felony cases. — Provisions of this section to the effect that on calling each juror the state or the accused may make either one of certain objections, including an objection based upon relationship, are applicable only in felony cases. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934).

Challenges for principal cause are based on facts which automatically disqualify juror from serving. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981).

Peremptory challenges are challenges to individual jurors but are not challenges for cause. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981).

Disqualification waived if not raised promptly. — When parties are furnished with a list of the jury, it is the parties duty, if the parties know that any of the jurors are disqualified, to call attention to the disqualification, or the disqualification will be held to have been waived; if the parties have reasonable grounds to suspect that any of the jurors are disqualified, it is the parties duty to call attention to the fact so that due inquiry may be made of the panel. Kennedy v. State, 191 Ga. 22, 11 S.E.2d 179 (1940).

Failure to object waives objection to familial relationship. — If defense counsel was present during the entire voir dire, yet failed to object to the trial judge's failure to qualify prospective jurors as to

General Consideration (Cont'd)

potential familial relation to the deceased victim, a ground for a challenge for cause under O.C.G.A. § 15-12-163, this inaction was a waiver and constitutes induced error. McKenzie v. State, 248 Ga. 294, 282 S.E.2d 95 (1981), overruled on other grounds, O'Kelley v. State, 284 Ga. 758, 670 S.E.2d 388 (2008).

Challenge to nonresident juror must be presented before verdict. — Verdict finding the defendant guilty of murder, without a recommendation, could not be set aside on the ground that one of the jurors was a nonresident of the state at the time of the trial, if no challenge was presented before the verdict, even though the movant did not know of such fact until after the verdict. Trammell v. State, 183 Ga. 711, 189 S.E. 529 (1937).

No error in court not excusing jurors for cause. Hayes v. State, 261 Ga. 439, 405 S.E.2d 660 (1991).

Trial court not required to question juror. — Since the trial court was not required to make further inquiry of a juror who disclosed that the juror held a preconceived notion concerning a witness that was not beneficial to the defense after defense counsel "rested his case" for excusal for cause, the trial court did not err when the court did not independently question the juror. Poole v. State, 291 Ga. 848, 734 S.E.2d 1 (2012).

Presentation of jurors to defendant. — Trial court did not err in refusing defendant's request to have prospective jurors present during the striking of the jury; defendant had ample opportunity to question and observe each juror during voir dire. Martin v. State, 205 Ga. App. 591, 422 S.E.2d 876, cert. denied, 205 Ga. App. 900, 422 S.E.2d 876 (1992).

Cited in Simmons v. State, 73 Ga. 609, 54 Am. R. 885 (1884); Herndon v. State, 178 Ga. 832, 174 S.E. 597 (1934); Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654 (1937); Merrell v. State, 135 Ga. App. 699, 218 S.E.2d 458 (1975); Jones v. State, 137 Ga. App. 612, 224 S.E.2d 473 (1976); Jones v. State, 139 Ga. App. 824, 229 S.E.2d 789 (1976); Foster v. State, 240 Ga. 858, 242 S.E.2d 600 (1978); Drake v. State, 241 Ga. 583, 247 S.E.2d 57 (1978); Green v. State, 246 Ga. 598, 272 S.E.2d 475 (1980); Hughes v. State, 161 Ga. App. 824, 288 S.E.2d 916 (1982); Najmaister v. State, 196 Ga. App. 345, 396 S.E.2d 71 (1990); Rower v. State, 219 Ga. App. 865, 466 S.E.2d 897 (1995); Cheeks v. State, 234 Ga. App. 446, 507 S.E.2d 204 (1998).

Grounds for Challenge

1. In General

County citizenship not required. — This section does not state any length of time that juror must be citizen of county. Thomas v. State, 27 Ga. 287 (1859).

Trial court determined under O.C.G.A. § 15-12-163(c) that a juror who had recently moved from the county was competent to serve, and defendant presented no evidence to contradict this finding; even if counsel's failure to object could be deemed ineffective representation, the defendant did not show that the deficiency prejudiced the defense. Lawson v. State, 278 Ga. App. 852, 630 S.E.2d 131 (2006).

Proof that juror is not naturalized is required if juror was born in foreign country. Jordan v. State, 22 Ga. 545 (1857); Johnson v. State, 58 Ga. 491 (1877).

Residence is a matter of election if juror's house is on county line. Chancey v. State, 141 Ga. 54, 80 S.E. 287 (1913).

Temporary absence is not change of domicile. Dasher v. State, 113 Ga. 3, 38 S.E. 348 (1901).

Waiver of underage juror. — It is too late after verdict to except to service of juror on ground that juror was underage at time of verdict. Shirley v. State, 146 Ga. 9, 90 S.E. 277 (1916).

Fact that juror over age is no ground for a challenge to cause. Staten v. State, 141 Ga. 82, 80 S.E. 850 (1913); Thomas v. State, 144 Ga. 298, 87 S.E. 8 (1915).

Exemption by reason of being over age is privilege, not disqualification. Albany Phosphate Co. v. Hugger Bros., 4 Ga. App. 771, 62 S.E. 533 (1908).

If court is satisfied from inspection that juror is drunk the court may set juror aside of the court's own motion. Thomas v. State, 27 Ga. 287 (1859); Wall v. State, 126 Ga. 549, 55 S.E. 484 (1906).

Juror not on regular list. — It is error to overrule challenge to juror whose name does not appear on regular jury list. Faulkner v. Snead, 122 Ga. 28, 49 S.E. 747 (1905).

Misstating juror's name is not ground for challenge for cause. Chapman v. State, 18 Ga. 736 (1855); Ratteree v. State, 53 Ga. 570 (1875); Central R.R. & Banking Co. v. Gamble, 77 Ga. 584, 3 S.E. 287 (1886).

Jurors known by parties to be prospective witnesses about matters material to the case should be excused for cause on proper motion. Lively v. State, 262 Ga. 510, 421 S.E.2d 528 (1992).

Juror may have same profession as party. — Road overseer may be juror at trial for assault on another road overseer. Rowe v. State, 15 Ga. App. 660, 84 S.E. 132 (1915).

Signing petition requesting that defendant be tried at special term not disqualification. Hicks v. State, 126 Ga. 80, 54 S.E. 807 (1906).

Jury service by convicted felon. — There is no statute specifically prohibiting jury service by one who has been convicted of a felony. Bennett v. State, 262 Ga. 149, 414 S.E.2d 218 (1992), cert. denied, 505 U.S. 1225, 113 S. Ct. 416, 121 L. Ed. 2d 340 (1992).

Although the state notified the defendant and the trial court soon after trial that two jurors were convicted felons, because there was no evidence establishing the identity of either juror, documenting the convictions, or showing that either had not had their rights restored, the defendant's due process rights were not violated; thus, denial of a motion for new trial on this ground was proper. Jones v. State, 289 Ga. App. 767, 658 S.E.2d 386 (2008).

When conviction of crime a disqualification. — One who has been convicted or has pled guilty to offense involving moral turpitude is disqualified from serving as a juror. Williams v. State, 12 Ga. App. 337, 77 S.E. 189 (1913).

Trial court did not err by striking for cause a juror who stated that the juror had a burglary and two drug-related convictions but who could not say whether or not the juror's civil rights had been restored. Smith v. State, 277 Ga. 213, 586 S.E.2d 639 (2003), cert. denied, 541 U.S. 1032, 124 S. Ct. 2101, 158 L. Ed. 2d 715 (2004).

First offender treatment is not "conviction" for purposes of serving on a jury. — Prospective petit juror serving a sentence under the First Offender Act, O.C.G.A. § 42-8-60 et seq., had not been "convicted" within the meaning of O.C.G.A. § 15-12-163(b)(5), which allowed either the state or the accused to object to the seating of a juror who had been convicted of a felony; the trial court therefore erred in disqualifying the juror for cause. Humphreys v. State, 287 Ga. 63, 694 S.E.2d 316, cert. denied, 131 S. Ct. 599, 178 L. Ed. 2d 438 (2010).

Opposition to death penalty. — Trial court did not err by excusing jurors who expressed a conscientious objection to the death penalty; to the extent that this contention was not rendered moot because the defendant did not receive the death penalty, it lacked merit as a trial court did not abuse the court's discretion by excusing jurors in a death penalty case who indicated that the jurors were wholly opposed to the death penalty under any circumstances. Thomason v. State, 281 Ga. 429, 637 S.E.2d 639 (2006).

Mere conviction of federal crime not disqualification. — One who has been convicted of a felony, or a crime involving an intent to defraud, in a federal court is not thereby rendered disqualified to serve as a juror in a court of this state, there being no statute declaring such disqualification. Brady v. State, 199 Ga. 566, 34 S.E.2d 849 (1945).

Juror who signed defendant's bail bond removed for cause. — Juror was removed for cause after one of the juror's had signed defendant's bail bond which was interfering with the panel coming to a unanimous decision, although the state had not objected to the juror until deliberations began and had not offered proof that the juror had unfairly affected the other juror's deliberations. Hart v. State, 157 Ga. App. 716, 278 S.E.2d 419 (1981).

Juror who was victim of crime. — In a prosecution for armed robbery, forgery, and driving with a suspended license, the fact that a juror previously had a social

Grounds for Challenge (Cont'd)
1. In General (Cont'd)

security check stolen was not grounds for a challenge for cause. Smith v. State, 234 Ga. App. 586, 506 S.E.2d 406 (1998).

Magistrate not dismissed for cause. — Mere fact that a juror might happen to be a magistrate would be no objection to the juror's qualification as a juror, and, in fact, the intelligence and personal character of these magistrates is such as ordinarily to render the magistrates peculiarly qualified for jury service. Jackson v. State, 202 Ga. App. 237, 414 S.E.2d 263 (1991), cert. denied, 202 Ga. App. 905, 414 S.E.2d 263 (1992).

Challenges for cause properly denied. — Trial court did not err in not excluding three venirepersons for cause when one venireperson's sister-in-law had been formerly married to the victim's brother, when one venireperson's father was the elected county sheriff, and when another venireperson's mother was a victim-witness coordinator and his girlfriend an assistant district attorney; the defendant had not shown that any of them was biased or improperly related. Stokes v. State, 281 Ga. 825, 642 S.E.2d 82 (2007).

Trial court did not err in declining to excuse three jurors for cause when one juror had two nieces who had been sexually abused 15 to 20 years before in another state, one juror had been robbed at gunpoint at a bank nine years before, and one juror had worked for a bank in Washington State that had been robbed four times a long time before. None had a personal connection to anyone in the defendant's case, and all stated that they could be fair and impartial. Fencil v. State, 288 Ga. App. 612, 654 S.E.2d 472 (2007).

Trial court did not abuse the court's discretion in refusing to strike a juror for cause because the juror could not be considered a party at interest but had, at most, an ongoing business relationship with the district attorney's office since the juror was only a consultant or contractor to the district attorney's office; the trial court was entitled to rely on the juror's responses to voir dire in determining qualifications. Berry v. State, 302 Ga. App. 31, 690 S.E.2d 428 (2010), cert. denied, No. S10C0825, 2010 Ga. LEXIS 459 (Ga. 2010).

Defendant's convictions for aggravated child molestation were proper because there was no error in the trial court's denial of the defendant's motion to strike a prospective juror since the juror's testimony did not show that the juror had an opinion or bias that would disqualify the juror as a matter of law under O.C.G.A. § 15-12-163. Rather, the record showed that although the prospective juror was troubled by the emotional aspects of the case involving sexual offenses against a child, the juror would be able to put the juror's emotions aside and decide the case based on the evidence. Cwikla v. State, 313 Ga. App. 526, 722 S.E.2d 156 (2012).

Juror employed as security guard. — Trial court did not err in refusing to strike for cause a juror who apparently was employed as a private security guard. The decision which held that police officers, employed full-time, must be excused if challenged for cause in criminal cases was inapplicable to this case. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742 (1986).

Excluding student scheduled to take exams. — If error was assigned on the failure to excuse a juror for cause, a student who indicated the student was going to have two exams later that week, one on Wednesday and one on Friday, and the trial commenced on Monday and concluded on Tuesday, there was no showing that the student's impartiality would be, or was, in any way affected by such circumstances; and there being no basis for disqualification under O.C.G.A. § 15-12-163 or O.C.G.A. § 15-12-164, the trial court did not abuse the court's discretion by failing to remove the juror. Robinson v. State, 180 Ga. App. 248, 348 S.E.2d 761 (1986).

Juror serving at earlier session. — Although service at a preceding court session rendered a juror ineligible, and thus incompetent, the juror's service was not grounds for a new trial, and the juror's service without challenge prevented the verdict from being set aside for cause. Jordan v. Smith, 119 Ga. 443, 46 S.E. 679 (1904).

Voir dire. — Defendant's conviction for aggravated assault was affirmed because the prosecutor was required to mention the defendant's name during voir dire, pursuant to O.C.G.A. §§ 15-12-163(b)(4) and 15-12-164(a)(2), to see if any of the jurors knew the defendant. Thus, there was no ground for a mistrial. Alexander v. State, 264 Ga. App. 251, 590 S.E.2d 233 (2003).

Personal knowledge of juror in sexual molestation case. — Although the juror was troubled by the emotional aspects of deciding a case involving sexual offenses against a child because the juror had recently learned that the children of a friend had been sexually molested by a relative, the trial court did not abuse the court's discretion in failing to remove the juror for cause. Garland v. State, 263 Ga. 495, 435 S.E.2d 431 (1993).

Comprehension of English. — Trial court did not err in not striking two jurors for cause on the ground that the jurors could not communicate in English under O.C.G.A. § 15-12-163(b) when the court found that one juror showed no difficulty and was apparently trying to use concerns about language to get off the jury; the other's English was clear and the juror complained only about understanding legal terms. Ford v. State, 289 Ga. App. 865, 658 S.E.2d 428 (2008).

Trial court did not abuse the court's discretion by refusing to excuse a prospective juror for cause under O.C.G.A. § 15-12-163(b)(6) due to the juror's concerns about the juror's ability to speak and understand English. The juror was questioned about the juror's asserted language difficulties, and the trial court found that the juror's speech and comprehension were good. Abdullah v. State, 284 Ga. 399, 667 S.E.2d 584 (2008).

When asked by the court whether the juror could perform the duty of a juror, the juror stated that the juror could; thus, the trial court did not err by denying appellants' challenge for cause of a juror the appellants' contended could not speak English because the juror admitted that the juror "missed a few things" even though the juror was paying attention. Overton v. State, 295 Ga. App. 223, 671 S.E.2d 507 (2008), cert. denied, No. S09C0654, 2009 Ga. LEXIS 212 (Ga. 2009).

Trial court did not abuse the court's discretion in denying defendant's motion to strike for cause a prospective juror who lacked English language proficiency because the trial judge remarked that the judge believed the juror was qualified and had a "pretty good vocabulary," and the juror understood "just about everything defense counsel said, including some words that were not particularly simple, straightforward kind of words." Gonzalez v. State, 299 Ga. App. 777, 683 S.E.2d 878 (2009).

Trial court did not err in striking a juror for cause because the juror said that the juror understood 90 percent of what was said, but that English was not the juror's native language and that the juror did not understand some of the legal terminology that had been used, and because the trial court determined that the jurors needed to understand 100 percent of the proceedings. Bianchi v. State, 327 Ga. App. 440, 759 S.E.2d 536 (2014).

Juror with hearing difficulties. — Trial court did not abuse the court's discretion by failing to remove a juror based on defendant's contention that the juror was unable to hear. Carter v. State, 228 Ga. App. 335, 491 S.E.2d 525 (1997).

Trial court did not err in ruling that the state could use one of the state's peremptory strikes to remove a juror whom the prosecutor regarded as disabled because of the juror's hearing difficulties. Hill v. Duncan, 249 Ga. App. 342, 548 S.E.2d 83 (2001).

Trial court did not err in not striking for cause a juror with a hearing difficulty; juror, whose difficulty was mostly in one ear, agreed to use amplified headphones if selected, and the juror also responded to almost all questions asked with no apparent difficulty. Ford v. State, 289 Ga. App. 865, 658 S.E.2d 428 (2008).

Mental illness or mental retardation. — Simple fact that an individual makes one visit — or multiple visits — to a psychiatrist does not per se disqualify that individual from jury service due to mental illness. Bolick v. State, 244 Ga. App. 567, 536 S.E.2d 242 (2000).

Trial court did not err by refusing to

Grounds for Challenge (Cont'd)
1. In General (Cont'd)

allow the defendant to pose a general question to the entire jury panel on voir dire as to whether anyone on the panel had ever been treated for any type of mental illness because the court agreed that defense counsel had the right during individual questioning to explore any concerns which might arise regarding the mental health of a potential juror. Caldwell v. State, 249 Ga. App. 885, 549 S.E.2d 449 (2001).

Prospective juror's excuse for cause under O.C.G.A. § 15-12-163(b)(3) and (c) was not an abuse of discretion since: (1) the juror had been previously treated for schizophrenia and other mental health problems; (2) the juror exhibited bizarre behavior while waiting to be questioned on voir dire; (3) the juror's answers to voir dire questions were often disconnected and rambling; and (4) the trial court consulted with the juror's doctor, who opined in writing that the juror was mentally ill and incapable of serving on a jury. Sallie v. State, 276 Ga. 506, 578 S.E.2d 444, cert. denied, 540 U.S. 902, 124 S. Ct. 251, 157 L. Ed. 2d 185 (2003).

2. Disqualifying Relationships

Paragraph (b)(4) is based upon doctrine that juror would naturally favor kinsman. Wright v. Smith, 104 Ga. 174, 30 S.E. 651 (1898); Temples v. Central of Ga. Ry., 15 Ga. App. 115, 82 S.E. 777 (1914).

Relationship which disqualifies juror is relationship by consanguinity; the relationship by affinity extends only to the husband or wife of such blood kin. Pope v. State, 52 Ga. App. 411, 183 S.E. 630 (1936).

Relationship to prosecutor ground for new trial. — If it appears that a juror is related within the prohibited degree to the prosecutor, the law declares the disqualification; and if such relation is unknown to the accused until after the verdict, a new trial will be granted. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939).

DFCS worker not disqualified. — During voir dire, after the defendant made a motion to disqualify for cause a juror who was the daughter of a DFCS worker involved in the case, the court ruled this was not cause for disqualification because the worker was seated at the table with the prosecutor during jury selection, but did not testify or otherwise participate in the trial. McLelland v. State, 203 Ga. App. 93, 416 S.E.2d 340, cert. denied, 203 Ga. App. 907, 416 S.E.2d 340 (1992).

Persons related to prosecutor disqualified. — Juror whose brother married the sister of the prosecutor's wife did not thereby become related to prosecutor so as to be disqualified. Lemming v. State, 61 Ga. App. 605, 7 S.E.2d 42 (1940).

Acquaintance with family members. — Trial court did not improperly seat six jurors in a death penalty case as: (1) the first juror testified that, despite the juror's acquaintance with the victim's family, the juror could act impartially, listen to the evidence, and decide the case based upon the facts and arguments; (2) a second juror stated that the juror's acquaintance with a family member of the victim would have no bearing on the juror's consideration of the case; and (3) four jurors testified that the juror could fairly consider all possible punishments for the crime, not just the death penalty. Thomason v. State, 281 Ga. 429, 637 S.E.2d 639 (2006).

Person who swears out a warrant against a criminal defendant is the "prosecutor" for purposes of jury selection; therefore, that person's spouse should be disqualified. McKee v. State, 168 Ga. App. 214, 308 S.E.2d 574 (1983).

Kin of person who swore out warrant against criminal defendant. — Member of the venire who stated the member was a third cousin of the man who swore out the affidavit for the warrant for defendant's arrest should have been dismissed for cause, and the trial court committed reversible error when the court refused to disqualify the member. Howard v. State, 191 Ga. App. 418, 382 S.E.2d 159 (1989).

Because there was no marriage between the defendant and the mother of his children, a legal relationship by affinity was never created; accordingly, the defendant and a juror who was a second cousin to the mother of the defendant's children were

not related by affinity, and the juror was not disqualified by her kinship pursuant to O.C.G.A. § 15-12-163(b)(4). Wilmore v. State, 268 Ga. App. 646, 602 S.E.2d 343 (2004).

Application if relationship is to unindicted coconspirator. — Rule of law that disqualifies a juror if the juror is related within the prohibited degree to a prosecutor or to one of the defendants in a joint indictment applies in principle in a case when a conspiracy is alleged to exist between two persons, although only one is indicted and on trial. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939).

Juror related to stockholder in insolvent bank disqualified. — On the trial of an officer of an insolvent bank, a juror who is related within the prohibited degrees to a stockholder or depositor in the insolvent bank is disqualified. Fordham v. State, 148 Ga. 758, 98 S.E. 267 (1919).

Kin of prosecutor, accused, or victim. — Juror who was the daughter of the arresting officer is not disqualified from sitting on the jury for principal cause even though the officer was a potential witness because the disqualification statute applies only to the near kin of the prosecutor, defendant, or victim. Jones v. State, 184 Ga. App. 4, 360 S.E.2d 599 (1987).

Trial court did not err in denying a new trial based on a juror's failure to disclose the juror's former marriage 20 years earlier to the victim's first cousin. Scott v. State, 274 Ga. 153, 549 S.E.2d 338 (2001), cert. denied, 535 U.S. 929, 122 S. Ct. 1301, 152 L. Ed. 2d 212 (2002).

Defendant waived juror's disqualification of kinship to victim. — Trial court was authorized to find that a defendant waived the disqualification of a juror based on that juror's familial relation to the victim of the crimes for which the defendant was convicted as the defendant did not offer any evidence that the defendant did not know of, and could not have discovered, the juror's disqualifying relationship. Although the juror testified at the hearing on the defendant's motion for a new trial that the juror only learned that the juror's uncle was the victim's grandfather after the juror's service was complete, the juror's ignorance of the relationship was not probative of whether the defendant knew, or through the exercise of ordinary diligence could have discovered, the relationship. Moran v. State, 293 Ga. App. 279, 666 S.E.2d 726 (2008).

Business relationship. — Trial court erred in not striking for cause potential jurors who had a business relationship with the corporation which was the victim of the burglary in issue and the employer of the victim of the armed robbery in issue, and trial counsel was ineffective for failing to have the shareholders of the victim corporation removed for cause. Kirkland v. State, 274 Ga. 778, 560 S.E.2d 6 (2002).

Trial court properly excluded a juror who was a cousin of the defendant and a relative of one of the defendant's grandparents who testified at the trial; even if the juror's statements about the particular degrees of consanguinity were vague, it was within the trial court's discretion to exclude the juror whether or not the test of O.C.G.A. § 15-12-135(a) was met. Paige v. State, 281 Ga. 504, 639 S.E.2d 478 (2007).

Step-uncle of victim not disqualified. — If prospective juror's brother was the step-father of the victim and, thus, the prospective juror was the step-uncle of the victim, the victim and the brother of the prospective juror were certainly related but the victim and the prospective juror were not related within any prohibited degree. Day v. State, 188 Ga. App. 648, 374 S.E.2d 87 (1988).

Relationship among jurors not a disqualification. — Juror who was the father and employer of another juror was not disqualified from serving on the jury. Bryant v. State, 268 Ga. 664, 492 S.E.2d 868 (1997).

Lack of knowledge of relationship does not relieve disqualification. — Juror who is related within the sixth degree of consanguinity or affinity to the prosecutor is disqualified by the fact of relationship and the fact that the juror did not know of the relationship or that the juror's kinsman was a prosecutor does not relieve the disqualification. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939).

Juror's own opinion as to bias. — Juror may be found disqualified because

Grounds for Challenge (Cont'd)
2. Disqualifying Relationships (Cont'd)

of a relationship with a party, even though the juror insists the juror is not biased; therefore, the juror's opinion of the juror's qualification is by no means determinative. Lively v. State, 262 Ga. 510, 421 S.E.2d 528 (1992).

Sheriff is not prosecutor. — Sheriff could not be characterized as the "prosecutor" under O.C.G.A. § 15-12-163(b)(4) since the sheriff participated in the arrest only as an assisting officer and did not testify at trial. Davis v. State, 194 Ga. App. 482, 391 S.E.2d 124 (1990).

Members of group acting as prosecutor disqualified. — Members of an electric membership corporation were disqualified from serving as jurors in a prosecution for criminal damage to property owned by the corporation, even though the corporation was not listed as the actual prosecutor. Lowman v. State, 197 Ga. App. 556, 398 S.E.2d 832 (1990).

Employment relationship not a disqualification. — In a prosecution for malice murder, the fact that the spouse of a prospective juror was employed at the motel where the crimes occurred did not require that the juror be stricken for cause. Burgess v. State, 264 Ga. 777, 450 S.E.2d 680 (1994), cert. denied, 515 U.S. 1133, 115 S. Ct. 2559, 132 L. Ed. 2d 813 (1995).

Employment by institutional victim not a per se disqualification. — While kinship to the victim may automatically disqualify prospective jurors in a criminal case pursuant to paragraph (b)(4) of O.C.G.A. § 15-12-163, mere employment by a university when the actual victim was the university library is not a per se disqualification. Willingham v. State, 198 Ga. App. 178, 401 S.E.2d 63 (1990), cert. denied, 502 U.S. 980, 112 S. Ct. 581, 116 L. Ed. 2d 607 (1991).

Fiancé of a police officer was not subject to disqualification for principal cause, even though the officer was one of the arresting officers and was a witness in the case. Croom v. State, 217 Ga. App. 596, 458 S.E.2d 679 (1995).

Mother-in-law of investigating officer. — Even if the defendant's allegation were true that a juror who served during defendant's felony murder prosecution was the mother-in-law of a law enforcement officer who investigated the murder, the trial court did not err in refusing to strike the juror for cause since a juror need only be struck for cause when he or she is in a close relationship to the prosecutor of a criminal trial, to the accused, or to the victim. Bryant v. State, 270 Ga. 266, 507 S.E.2d 451 (1998).

Acquaintance with police officer witness is not grounds to disqualify a juror for cause. Smith v. State, 234 Ga. App. 586, 506 S.E.2d 406 (1998).

3. Involvement in Prosecution

Involvement in prosecution a disqualification. — One who is actively engaged in any way in the prosecution of one accused of crime is disqualified from sitting as a trier in the case. Johnson v. Mayor of Hazlehurst, 8 Ga. App. 841, 70 S.E. 258 (1911).

One who contributes to fund for purpose of defraying expense of apprehending criminal or for prosecution of the case is prosecutor. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939).

If one other than an officer of the law takes such an interest in apprehending a person who is supposed to have committed a crime that one contributes one's funds to aid in the apprehension and prosecution of such person, one is not a competent juror on the trial of another person alleged to have conspired with the absent one and to have aided that person in the commission of the crime, and those related to such contributor within the prohibited degree would also be barred from passing judgment on the person being tried. Harris v. State, 188 Ga. 745, 4 S.E.2d 651 (1939).

Failure to make adequate inquiry of juror whose child had been prosecuted. — Trial court abused the court's discretion by excusing for cause a juror whose child had been prosecuted by one of the assistant district attorneys who was prosecuting the defendant's case and had been represented by the attorney who was representing a co-defendant because no adequate inquiry was made by the trial court as to whether an actual bias existed

to justify excusing the juror for cause. Simon v. State, 320 Ga. App. 15, 739 S.E.2d 34 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 199 et seq., 276 et seq.

C.J.S. — 50A C.J.S., Juries, § 352 et seq.

ALR. — Contributing to fund for prosecution as disqualifying juror, 1 ALR 519.

Membership in secret order or organization for the suppression of crime as proper subject of examination, or ground of challenge, of juror, 31 ALR 411; 158 ALR 1361.

Relationship to one financially affected by the offense charged as disqualifying juror, 63 ALR 183.

Statutory grounds for challenge of jurors for cause as exclusive of common-law grounds, 64 ALR 645.

Excusing qualified juror drawn in criminal case as ground of complaint by defendant, 96 ALR 508.

Prospective juror's connection with insurance company as ground of challenge for cause in action for personal injuries or damage to property, 103 ALR 511.

Prejudice against certain type of defense as ground of challenge for cause of juror in criminal case, 112 ALR 531.

Disqualifying relationship unknown to juror as ground of new trial in criminal case, 116 ALR 679.

Disqualifying relationship by affinity in case of judge or juror as affected by dissolution of marriage, 117 ALR 800.

Intelligence, character, religious, or loyalty tests of qualifications of juror, 126 ALR 506.

Proof as to exclusion of or discrimination against eligible class or race in respect to jury in criminal case, 1 ALR2d 1291.

Failure of juror in criminal case to disclose his previous jury service within disqualifying period as ground for reversal or new trial, 13 ALR2d 1482.

Use of intoxicating liquor by jurors: criminal cases, 7 ALR3d 1040.

Claustrophobia or other neurosis of juror as subject of inquiry on voir dire or disqualification of juror, 20 ALR3d 1420.

Jury: membership in racially biased or prejudiced organization as proper subject of voir dire inquiry or ground for challenge, 63 ALR3d 1052.

Juror's voir dire denial or nondisclosure of acquaintance or relationship with attorney in case, or with partner or associate of such attorney, as ground for new trial or mistrial, 64 ALR3d 126.

Similarity of occupation between proposed juror and alleged victim of crime as affecting juror's competency, 71 ALR3d 974.

Deafness of juror as ground for impeaching verdict, or securing new trial, or reversal on appeal, 38 ALR4th 1170.

Jury: visual impairment as disqualification, 48 ALR4th 1154.

Unauthorized view of premises by juror or jury in criminal case as ground for reversal, new trial, or mistrial, 50 ALR4th 995.

Professional or business relations between proposed juror and attorney as ground for challenge for cause, 52 ALR4th 964.

Fact that juror in criminal case, or juror's relative or friend, has previously been victim of criminal incident as ground of disqualification, 65 ALR4th 743.

Prospective juror's connection with insurance company as ground for challenge for cause, 9 ALR5th 102.

Use of peremptory challenges to exclude persons from criminal jury based on religious affiliation — Post-Batson state cases, 63 ALR5th 375.

Disqualification or exemption of juror for conviction of, or prosecution for, criminal offense, 75 ALR5th 295.

Examination and challenge of state case jurors on basis of attitudes toward homosexuality, 80 ALR5th 469.

Prejudicial effect of juror's inability to comprehend English, 117 ALR5th 1.

Examination and challenge of federal case jurors on basis of attitudes toward homosexuality, 85 ALR Fed. 864.

15-12-164. Questions on voir dire; setting aside juror for cause.

(a) On voir dire examination in a felony trial, the jurors shall be asked the following questions:

(1) "Have you, for any reason, formed and expressed any opinion in regard to the guilt or innocence of the accused?" If the juror answers in the negative, the question in paragraph (2) of this subsection shall be propounded to him;

(2) "Have you any prejudice or bias resting on your mind either for or against the accused?" If the juror answers in the negative, the question in paragraph (3) of this subsection shall be propounded to him;

(3) "Is your mind perfectly impartial between the state and the accused?" If the juror answers this question in the affirmative, he shall be adjudged and held to be a competent juror in all cases where the authorized penalty for the offense does not involve the life of the accused; but when it does involve the life of the accused, the question in paragraph (4) of this subsection shall also be put to him;

(4) "Are you conscientiously opposed to capital punishment?" If the juror answers this question in the negative, he shall be held to be a competent juror.

(b) Either the state or the accused shall have the right to introduce evidence before the judge to show that a juror's answers, or any of them, are untrue. It shall be the duty of the judge to determine the truth of such answers as may be thus questioned before the court.

(c) If a juror answers any of the questions set out in subsection (a) of this Code section so as to render him incompetent or if he is found to be so by the judge, he shall be set aside for cause.

(d) The court shall also excuse for cause any juror who from the totality of the juror's answers on voir dire is determined by the court to be substantially impaired in the juror's ability to be fair and impartial. The juror's own representation that the juror would be fair and impartial is to be considered by the court but is not determinative. (Laws 1843, Cobb's 1851 Digest, p. 843; Ga. L. 1853-54, p. 86, § 1; Ga. L. 1855-56, p. 229, §§ 9, 10; Code 1863, §§ 4569, 4570; Code 1868, §§ 4589, 4590; Code 1873, §§ 4682, 4683; Code 1882, §§ 4682, 4683; Penal Code 1895, §§ 975, 976; Penal Code 1910, §§ 1001, 1002; Code 1933, §§ 59-806, 59-807; Ga. L. 1979, p. 1047, § 1; Ga. L. 2005, p. 20, § 6/HB 170; Ga. L. 2011, p. 59, § 1-58/HB 415.)

Editor's notes. — Ga. L. 2005, p. 20, § 1/HB 170, not codified by the General Assembly, provides that: "This act shall be known and may be cited as the 'Criminal Justice Act of 2005.'"

Ga. L. 2005, p. 20, § 17/HB 170, not

codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all trials which commence on or after July 1, 2005.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For comment on Tumlin v. State, 88 Ga. App. 713, 77 S.E.2d 555 (1953), see 16 Ga. B.J. 346 (1954). For comment discussing constitutionality of disqualification of jurors in murder trial for general objection to death penalty in light of Witherspoon v. Illinois, 391 U.S. 510, 88 S. Ct. 1770, 20 L. Ed. 2d 776 (1968), see 3 Ga. L. Rev. 234 (1968). For comment on Alderman v. State, 241 Ga. 496, 246 S.E.2d 642, cert. denied, 439 U.S. 991, 99 S. Ct. 593, 58 L. Ed. 2d 666 (1978), see 31 Mercer L. Rev. 349 (1979).

JUDICIAL DECISIONS

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General Consideration

O.C.G.A. § 15-12-164 is not so confusing as to render the statute unconstitutionally vague. Curry v. State, 255 Ga. 215, 336 S.E.2d 762 (1985), cert. denied, 475 U.S. 1090, 106 S. Ct. 1480, 89 L. Ed. 2d 734 (1986).

Constitutional right of trial by jury is not impaired. Woolfolk v. State, 85 Ga. 69, 11 S.E. 814 (1890).

Machinery provided for testing juror's competency meets all constitutional requirements. Herndon v. State, 178 Ga. 832, 174 S.E. 597 (1934), appeal dismissed, 295 U.S. 441, 55 S. Ct. 794, 79 L. Ed. 1530 (1935).

Object of this section is to appeal to conscience of juror. Kenyon v. Brightwell, 120 Ga. 606, 48 S.E. 124, 1 Ann. Cas. 169 (1904).

Purpose of questions. — These questions are designed to ascertain from the juror whether the juror has any opinion as to the guilt or innocence of the prisoner, either from having seen the crime committed or from having heard any testimony delivered on oath; and whether the juror has any prejudice or bias either for or against the prisoner, and whether the juror's mind is perfectly impartial between the state and the accused. Cade v. State, 207 Ga. 135, 60 S.E.2d 763 (1950).

O.C.G.A. § 15-12-164 establishes the test for disqualification for favor, and the reference in O.C.G.A. § 15-12-133 to "the usual voir dire questions ... put by the court" is to O.C.G.A. § 15-12-164, insofar as felony trials are concerned. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981).

Failure to exhaust peremptory challenges waives challenge for cause. — Even assuming the court errs in qualifying a juror, if the defendant does not use all the defendant's allotted peremptory strikes, the error, if any, was harmless. Wilcox v. State, 250 Ga. 745, 301 S.E.2d 251 (1983), cert. denied, 484 U.S. 925, 108 S. Ct. 287, 98 L. Ed. 2d 247 (1987).

Challenges for favor are based on admissions of juror or facts and circumstances raising a suspicion that the juror is actually biased for or against one of the parties. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981); Lovell v. State, 178 Ga. App. 366, 343 S.E.2d 414 (1986).

General Consideration (Cont'd)

Public excitement alone is not sufficient ground for continuance. Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931).

Juror as witness does not preclude impartial jury. — Defendant was not deprived of the right to trial by an impartial jury merely because the juror was called as a witness for the state. Tumlin v. State, 88 Ga. App. 713, 77 S.E.2d 555 (1953), for comment, see 16 Ga. B.J. 346 (1954).

Contribution to victim's family allowed. — This section does not embrace challenge on ground of juror's having contributed to fund raised for family of deceased. Thacker v. State, 226 Ga. 170, 173 S.E.2d 186 (1970), vacated on other grounds, 408 U.S. 936, 92 S. Ct. 2861, 33 L. Ed. 2d 753 (1972).

Disqualified if disbelieve circumstantial evidence. — Juror is disqualified in trial of capital felony if the juror is opposed to conviction upon circumstantial evidence. Compton v. State, 179 Ga. 560, 176 S.E. 764 (1934).

Knowing witness by appearance. — No error existed if the juror realized during trial and informed court that the juror knew a witness by appearance although not by name as the judge immediately inquired into and was assured of the juror's impartiality. McLamb v. State, 176 Ga. App. 727, 337 S.E.2d 360 (1985).

No error in not excluding student scheduled to take exams. — If error was assigned on the failure to excuse a juror for cause, a student who indicated the student was going to have two exams later that week, one on Wednesday and one on Friday, and the trial commenced on Monday and concluded on Tuesday, there was no showing that the student's impartiality would be, or was, in any way affected by such circumstances; there being no basis for disqualification under O.C.G.A. § 15-12-163 or O.C.G.A. § 15-12-164, the trial court did not abuse the court's discretion by failing to remove the juror. Robinson v. State, 180 Ga. App. 248, 348 S.E.2d 761 (1986).

No error in court not excusing jurors for cause. Hayes v. State, 261 Ga. 439, 405 S.E.2d 660 (1991).

Failure to make adequate inquiry of juror whose child had been prosecuted. — Trial court abused the court's discretion by excusing for cause a juror whose child had been prosecuted by one of the assistant district attorneys who was prosecuting the defendant's case and had been represented by the attorney who was representing a co-defendant because no adequate inquiry was made by the trial court as to whether an actual bias existed to justify excusing the juror for cause. Simon v. State, 320 Ga. App. 15, 739 S.E.2d 34 (2013).

Cited in Williams v. State, 60 Ga. 367, 27 Am. R. 412 (1878); Wilkerson v. State, 74 Ga. 398 (1884); Nobles v. State, 127 Ga. 212, 56 S.E. 125 (1906); Hilton & Dodge Lumber Co. v. Ingram, 135 Ga. 696, 70 S.E. 234 (1911); Bailey v. United States, 53 F.2d 982 (5th Cir. 1931); Herndon v. State, 178 Ga. 832, 174 S.E. 597 (1934); Anderson v. State, 72 Ga. App. 487, 34 S.E.2d 110 (1945); Ford v. State, 202 Ga. 599, 44 S.E.2d 263 (1947); Loomis v. State, 78 Ga. App. 153, 51 S.E.2d 13 (1948); Barton v. State, 81 Ga. App. 810, 60 S.E.2d 173 (1950); Hooks v. State, 215 Ga. 869, 114 S.E.2d 6 (1960); Clemon v. State, 218 Ga. 755, 130 S.E.2d 745 (1963); Williams v. State, 222 Ga. 208, 149 S.E.2d 449 (1966); Gunter v. State, 223 Ga. 290, 154 S.E.2d 608 (1967); Clarke v. Grimes, 223 Ga. 461, 156 S.E.2d 91 (1967); Williams v. Smith, 224 Ga. 800, 164 S.E.2d 798 (1968); Bloodworth v. State, 119 Ga. App. 677, 168 S.E.2d 334 (1969); Moore v. Dutton, 432 F.2d 1281 (5th Cir. 1970); Cobb v. State, 228 Ga. 292, 185 S.E.2d 378 (1971); Cobb v. State, 125 Ga. App. 556, 188 S.E.2d 260 (1972); West v. State, 229 Ga. 427, 192 S.E.2d 163 (1972); Shouse v. State, 231 Ga. 716, 203 S.E.2d 537 (1974); Collier v. State, 232 Ga. 282, 206 S.E.2d 445 (1974); Davis v. State, 134 Ga. App. 750, 216 S.E.2d 348 (1975); Tennon v. State, 235 Ga. 594, 220 S.E.2d 914 (1975); Jones v. State, 137 Ga. App. 612, 224 S.E.2d 473 (1976); Green v. State, 138 Ga. App. 466, 226 S.E.2d 618 (1976); Robinson v. State, 238 Ga. 291, 232 S.E.2d 561 (1977); Foster v. State, 240 Ga. 858, 242 S.E.2d 600 (1978); Clary v. State, 151 Ga. App. 301, 259 S.E.2d 697 (1979); Marable

v. State, 154 Ga. App. 426, 268 S.E.2d 720 (1980); Thompson v. State, 154 Ga. App. 704, 269 S.E.2d 474 (1980); Griffeth v. State, 154 Ga. App. 643, 269 S.E.2d 501 (1980); Tucker v. State, 249 Ga. 323, 290 S.E.2d 97 (1982); Walls v. State, 161 Ga. App. 235, 291 S.E.2d 15 (1982); Hatten v. State, 253 Ga. 24, 315 S.E.2d 893 (1984); Graham v. State, 171 Ga. App. 242, 319 S.E.2d 484 (1984); Jordan v. Lippman, 763 F.2d 1265 (11th Cir. 1985); Fugitt v. State, 254 Ga. 521, 330 S.E.2d 714 (1985); Cargill v. State, 255 Ga. 616, 340 S.E.2d 891 (1986); Walker v. State, 179 Ga. App. 782, 347 S.E.2d 711 (1986); Day v. State, 188 Ga. App. 648, 374 S.E.2d 87 (1988); Crosby v. State, 188 Ga. App. 191, 372 S.E.2d 471 (1988); Moon v. State, 258 Ga. 748, 375 S.E.2d 442 (1988); Lattany v. State, 193 Ga. App. 438, 388 S.E.2d 23 (1989); Respress v. State, 196 Ga. App. 858, 397 S.E.2d 195 (1990); Brown v. State, 261 Ga. 184, 402 S.E.2d 725 (1991); Ward v. State, 262 Ga. 293, 417 S.E.2d 130 (1992); Staples v. State, 209 Ga. App. 802, 434 S.E.2d 757 (1993); Moore v. State, 224 Ga. App. 797, 481 S.E.2d 892 (1997); Bolick v. State, 244 Ga. App. 567, 536 S.E.2d 242 (2000); Brown v. State, 246 Ga. App. 60, 539 S.E.2d 545 (2000); Darnell v. State, 257 Ga. App. 555, 571 S.E.2d 547 (2002); McKee v. State, 275 Ga. App. 646, 621 S.E.2d 611 (2005); Chandler v. State, 281 Ga. 712, 642 S.E.2d 646 (2007).

Formation of Opinion as to Guilt or Innocence

1. In General

Purpose of paragraph (a)(1). — Paragraph (a)(1) of this section seeks to obtain jurors who will consider case free from prejudgment or opinion regarding material facts. Roberts v. State, 4 Ga. App. 378, 61 S.E. 497 (1908).

Neutrality of mind must be effected. Myers v. State, 97 Ga. 76, 25 S.E. 252 (1895).

No disqualification results if opinion is vague. Blackman v. State, 80 Ga. 785, 7 S.E. 626 (1888), overruled on other grounds, Corbin v. State, 211 Ga. 400, 86 S.E.2d 221 (1955).

In order to disqualify a juror for cause it must be established that the juror's opinion is so fixed that it will not be changed by the evidence or charge of the court upon the evidence. Westbrook v. State, 242 Ga. 151, 249 S.E.2d 524 (1978), cert. denied, 439 U.S. 1102, 99 S. Ct. 881, 59 L. Ed. 2d 63 (1979).

When prospective juror has formed opinion based on hearsay (as opposed to being based on the juror's having seen crime committed or having heard testimony under oath), to disqualify such individual as a juror on ground that the juror has formed an opinion on guilt or innocence of the defendant, the opinion must be so fixed and definite that it would not be changed by evidence or charge of court upon trial of the case. Waters v. State, 248 Ga. 355, 283 S.E.2d 238 (1981), cert. denied, 463 U.S. 1213, 103 S. Ct. 3551, 77 L. Ed. 2d 1398 (1983); Childs v. State, 257 Ga. 243, 357 S.E.2d 48 (1987), cert. denied, 484 U.S. 970, 108 S. Ct. 467, 98 L. Ed. 2d 406 (1987).

Qualified jurors need not be totally ignorant of facts and issues involved in order to guarantee that a defendant has "a panel of impartial, 'indifferent' jurors." Mooney v. State, 243 Ga. 373, 254 S.E.2d 337, cert. denied, 444 U.S. 886, 100 S. Ct. 179, 62 L. Ed. 2d 116 (1979).

Mere existence of any preconceived notion as to guilt or innocence of accused is not sufficient to rebut presumption of juror's impartiality; rather a juror's impartiality is sufficient if the juror can lay aside the juror's impression or opinion and render a verdict based on the evidence presented in court. Mooney v. State, 243 Ga. 373, 254 S.E.2d 337, cert. denied, 444 U.S. 886, 100 S. Ct. 179, 62 L. Ed. 2d 116 (1979).

Juror's stated opinion of guilt upon defendant's failure to testify. — When a juror never indicated that the juror could set aside the juror's opinion of guilt if the defendant did not testify, and said that the juror could not answer truthfully that the juror would follow the trial court's instructions as to the burden of proof, it was error not to strike the juror for cause. McGuire v. State, 287 Ga. App. 764, 653 S.E.2d 101 (2007).

Opinion must be formed from seeing crime or hearing testimony. — To disqualify one from being a juror in a

Formation of Opinion as to Guilt or Innocence (Cont'd)
1. In General (Cont'd)

criminal case, the juror must have formed and expressed an opinion, either from having seen the crime committed, or from having heard the testimony under oath. One who from some other cause has formed and expressed an opinion that is not fixed and determined, and who indicates one's competency by answering the statutory questions on one's voir dire, is not an incompetent juror. Johnson v. State, 209 Ga. 333, 72 S.E.2d 291 (1952); Roach v. State, 221 Ga. 783, 147 S.E.2d 299, cert. denied, 385 U.S. 935, 87 S. Ct. 297, 17 L. Ed. 2d 215 (1966); Ruffin v. State, 243 Ga. 95, 252 S.E.2d 472, cert. denied, 444 U.S. 995, 100 S. Ct. 530, 62 L. Ed. 2d 425 (1979).

Juror whose opinion is not fixed is competent. — To disqualify a juror in a criminal case, the juror must have formed and expressed an opinion, either from witnessing the crime or having heard sworn testimony concerning the crime. One who from some other sources had formed and expressed an opinion which is not fixed and determined and who indicates the juror's competency by answering the statutory questions on voir dire is not an incompetent juror. Smith v. State, 148 Ga. App. 1, 251 S.E.2d 13 (1978); Ruffin v. State, 243 Ga. 95, 252 S.E.2d 472, cert. denied, 444 U.S. 995, 100 S. Ct. 530, 62 L. Ed. 2d 425 (1979).

Considering the juror's response to the trial court's questions that the juror had reservations about what the defendants were charged with and what the defendants had done, the trial court did not err in determining that the juror did not hold a fixed and definite opinion of the defendants' guilt or innocence that would have prevented the juror from adjudicating the case based solely upon the evidence and the jury charge. Therefore, the trial court did not err by denying the defendants' challenge of that juror for cause. Overton v. State, 295 Ga. App. 223, 671 S.E.2d 507 (2008), cert. denied, No. S09C0654, 2009 Ga. LEXIS 212 (Ga. 2009).

Effect of juror's statement that juror has formed an opinion. — A "yes" answer to the question in paragraph (a)(1) of O.C.G.A. § 15-12-164 does not require the automatic excusal of the juror. Childs v. State, 257 Ga. 243, 357 S.E.2d 48, cert. denied, 484 U.S. 970, 108 S. Ct. 467, 98 L. Ed. 2d 406 (1987).

Reading reports of crime in newspaper does not disqualify. — That a juror has formed or expressed an opinion from rumor or from newspaper reports will not disqualify the juror unless it appears that the opinion thus formed is so fixed and decided that the opinion would not yield readily to the testimony. Williams v. State, 177 Ga. 391, 170 S.E. 281 (1933).

Reports of the news media — newspapers, radio, and television — in the investigation of the crime by reports and pictures with detailed accounts and descriptions as to individuals alleged to be involved, their past history and quoted opinions of officers and prosecution officials, may be read or heard by prospective jurors in the county where the crime was committed. Such does not disqualify a juror from serving if on the voir dire the juror answers in the negative the questions propounded to a juror under this section. Williams v. State, 222 Ga. 208, 149 S.E.2d 449, cert. denied, 385 U.S. 887, 87 S. Ct. 184, 17 L. Ed. 2d 115 (1966).

There is no inference of prejudice requiring a change of venue, or a continuance, from the mere fact of the publishing of descriptive or even denunciatory matter, or even from the juror's having formed or expressed an opinion from rumor or from reports from newspapers or other news media; what is required is a showing that the juror had formed such a fixed or unchangeable opinion as to the guilt or innocence of the defendant as would not yield readily to the testimony. McCrary v. State, 229 Ga. 733, 194 S.E.2d 480 (1972).

Section applicable to misdemeanor case. — Paragraph (a)(1) of this section is available for use by the court in ascertaining the competency or incompetency of a juror in a misdemeanor case. Loomis v. State, 78 Ga. App. 153, 51 S.E.2d 13 (1948).

Reversible error for failure to excuse. — Failure to excuse juror for cause was reversible error since the juror had

been at a preliminary hearing and had formed a definite opinion as to the defendant's guilt or innocence, and the juror was not asked nor did the juror state whether the juror could be a fair and impartial juror. Bass v. State, 183 Ga. App. 349, 358 S.E.2d 837, cert. denied, 183 Ga. App. 905, 358 S.E.2d 837 (1987).

2. Involvement in Previous Trial

Service as juror at previous trial and conviction deemed disqualification. — Juror, who has served upon the trial of a person jointly accused with the defendant for the identical offense involving the same transaction, and has consented to a verdict of guilty against that person, is incompetent to try the defendant, even though the juror states that the juror has formed no opinion as to the defendant's guilt and that the juror can try the case impartially. Borders v. State, 46 Ga. App. 212, 167 S.E. 213 (1932).

Previous service on coroner's jury. — When in a murder trial, a juror's incompetency exists due to the juror's having served on the coroner's jury, but is not discovered until after the verdict, it may be urged under principles relating to newly discovered evidence by motion for a new trial. Under these principles, a new trial will not be required on such ground, if by ordinary diligence the defendant or defendant's attorney could have discovered the ground of incompetency of the juror before the verdict; the burden of showing such diligence being on the movant. Douberly v. State, 184 Ga. 573, 192 S.E. 223 (1937).

On trial of a defendant charged with murder, a juror who from having heard any of the testimony delivered on oath has formed and expressed any opinion in regard to the guilt or innocence of the prisoner at the bar is incompetent and shall be set aside for cause, and such incompetency will be shown if it appears that the juror in question had served as a juror on a coroner's inquest over the body of the person alleged to have been slain, and after hearing testimony has joined in rendition of a verdict declaring that the deceased "came to his death from an assault with murderous intent by an unknown person and same was murdered." Douberly v. State, 184 Ga. 573, 192 S.E. 223 (1937).

No disqualification exists if juror has not formed opinion. — Even though a juror had heard the evidence on a previous trial of the same case, this would not disqualify the juror unless the juror had formed and expressed an opinion from having heard the testimony delivered under oath. Ford v. State, 164 Ga. 638, 139 S.E. 355 (1927).

Fact that several of the jurors placed upon the defendant had, at a previous trial of the accused under the same indictment, been placed upon the defendant, and had been rejected either by the state or the defendant, did not disqualify the jurors or afford a basis for challenge to the poll; nor did the fact that some of these jurors had heard a portion of the testimony delivered on the previous trial disqualify the jurors since it did not appear that any of such jurors, from having heard any of the testimony, had formed or expressed any opinion as to the guilt or innocence of the accused. Hyde v. State, 196 Ga. 475, 26 S.E.2d 744 (1943).

No disqualification exists if no opinion formed as to sentence. — If one juror in new sentencing trial had been spectator at appellant's previous trial and at trial of appellant's codefendant and second juror was a secretary in law firm that had represented appellant's codefendant, and if second juror had formed an opinion as to guilt but neither had formed an opinion as to sentence, neither was subject to challenge for prejudice since appellant had already been tried and convicted for murder and the sole question to be tried was that of punishment. Green v. State, 246 Ga. 598, 272 S.E.2d 475 (1980), cert. denied, 450 U.S. 936, 101 S. Ct. 1402, 67 L. Ed. 2d 372 (1981).

Jurors' presence at first trial not grounds for continuance. — It is not ground for continuance that some jurors trying the case were present at defendant's first trial; this point should have been made by a challenge to the polls. Crider v. State, 98 Ga. App. 164, 105 S.E.2d 506 (1958).

Existence of Prejudice or Bias

Meaning of "prejudice" and "bias." — "Bias," in its legal acceptation, means

Existence of Prejudice or Bias (Cont'd)

only a leaning toward one of the parties rather than the other; and "prejudice" imports the formation of a fixed anticipatory judgment as contradistinguished from those opinions which may yield to evidence. Temples v. Central of Ga. Ry., 15 Ga. App. 115, 82 S.E. 777 (1914); Rowe v. State, 15 Ga. App. 660, 84 S.E. 132 (1915).

Strong belief in integrity and credibility of police officers. — Trial court would not commit reversible error in failing to excuse for cause a juror who exhibited a strong belief in the integrity and credibility of police officers, when under assiduous questioning the juror stated that, notwithstanding the juror's avowed faith in law enforcement persons, the juror would follow the instruction of the court as to the credibility of the witnesses and would weigh such testimony in the light of all the evidence. Watkins v. State, 160 Ga. App. 9, 285 S.E.2d 758 (1981).

Trial court did not err in denying a defendant's challenge for cause of a retired police officer who stated that the juror might be more inclined to give more weight to the testimony of a police officer than to the testimony of other witnesses; there was no indication that the juror was so biased that the juror could not render an impartial verdict. Underwood v. State, 283 Ga. App. 638, 642 S.E.2d 324 (2007).

Juror who was the uncle of a confidential informant on the case was not disqualified. — Although a juror was the uncle of the confidential informant (CI) in a drug selling case, the juror's relationship to the CI did not, by itself, disqualify the juror, and although the juror expressed that the juror would tend to believe the juror's nephew, the juror stated unequivocally that the juror could judge the testimony and the case impartially and be fair. Therefore, the trial court did not err in refusing to strike the uncle from the jury. Franklin v. State, 305 Ga. App. 574, 699 S.E.2d 868 (2010).

Subconscious identification with victim. — Juror who stated she might subconsciously identify with a rape victim, but said her mind was impartial between the state and the defendant, was not subject to dismissal for cause under O.C.G.A. § 15-12-164. Laney v. State, 159 Ga. App. 609, 284 S.E.2d 114 (1981).

Fear, trepidation, or abhorrence of specific crime not disqualifying factor. — Juror who has fear of, or some trepidation to, or some particular abhorrence to, a specific crime is not per se disqualified for cause as a juror in a trial of that type of criminal case. Harris v. State, 178 Ga. App. 735, 344 S.E.2d 528 (1986).

Ability of juror to set aside bias. — Since the record as a whole failed to support the trial court's finding that a potential juror could put aside the juror's bias to render an impartial verdict based solely on the evidence presented at trial, the trial court manifestly abused the court's discretion. Ivey v. State, 258 Ga. App. 587, 574 S.E.2d 663 (2002).

Lengthy and repeated questioning of a potential juror during voir dire by the trial court and the prosecutor about laying aside the juror's bias and deciding the case based solely on the evidence amounted to an instruction on the desired answer rather than a neutral attempt to determine the juror's impartiality, when in reality, the juror had a fixed and definite bias; thus, the juror should have been excused for cause. Foster v. State, 258 Ga. App. 601, 574 S.E.2d 843 (2002).

In order for a potential juror to be excused for cause, the person must be shown to hold an opinion of the guilt or innocence of the defendant that is so fixed and definite that the person will be unable to set the opinion aside and decide the case upon the evidence or the court's charge upon the evidence; therefore, personal knowledge of, or a relationship with, any witness, attorney, or party in the case is disqualifying only if it has created a fixed opinion of guilt or innocence or a bias for or against the accused. Thus, the trial court did not abuse the court's discretion in denying defendant's motion to excuse a juror for cause when, even though the juror's relations to the case presented a close call, the trial court engaged in the appropriate inquiries on voir dire; the juror's knowledge of the case and relationship with several members of the cast of characters involved had no bearing on

whether defendant was innocent or guilty; and the juror was completely confident in the juror's ability to be fair and impartial. Gibson v. State, 267 Ga. App. 473, 600 S.E.2d 417 (2004).

Trial court did not abuse the court's discretion in refusing to strike a juror for cause even though the juror revealed that prior experiences might preclude the juror from being a fair juror and stated that the juror may have a bias based on the fact that defendant had two attorneys; the juror also stated that the juror would look to the evidence, not prior experiences or a perceived bias, to determine whether the defendant was guilty or innocent. Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

With regard to a defendant's convictions for rape, aggravated battery, kidnapping with bodily injury, aggravated child molestation, and aggravated assault, during voir dire the trial court could question a juror further after the juror gave inconsistent answers about whether the juror thought the juror could be fair and impartial due to living near the crime scene, yet also stating that that same fact would not affect the juror's consideration of the evidence. Moreover, the transcript supported a finding that the juror did not have an opinion about the defendant's guilt or innocence that was so fixed and definite that the juror would have been unable to set the opinion aside and decide the case based upon the evidence or the court's charge upon the evidence, and therefore the trial court did not abuse the court's discretion in failing to excuse the juror for cause. Pitts v. State, 287 Ga. App. 540, 652 S.E.2d 181 (2007).

Trial court did not err in not striking a juror for cause when the juror initially said that the juror did not think that the juror could be fair; the trial court found that the juror was credible in stating that the juror would serve as an unbiased juror, and it was uniquely positioned to observe the demeanor of each juror and thereby evaluate the juror's capacity to render an impartial verdict. Moorer v. State, 286 Ga. App. 395, 649 S.E.2d 537 (2007), cert. denied, No. S07C1910, 2007 Ga. LEXIS 806 (Ga. 2007).

Although a prospective juror initially responded to the O.C.G.A. § 15-12-164(a) voir dire questions that the juror believed the defendant was guilty after hearing the indictment read, the juror later indicated that the juror understood that the state had to prove the allegations beyond a reasonable doubt. The trial court did not err in refusing to strike the juror for cause. Sadat-Moussavi v. State, 313 Ga. App. 433, 721 S.E.2d 647 (2011).

Trial court did not manifestly abuse its discretion when it did not excuse a prospective juror for cause sua sponte because, although the juror indicated the juror might have some issue with the defendant's status as a previously convicted felon, the juror stated that the juror could be objective and keep an open mind at trial. Thompson v. State, 294 Ga. 693, 755 S.E.2d 713 (2014).

Fact that a potential juror may have some doubt as to the juror's impartiality, or complete freedom from all bias, does not demand as a matter of law that the juror be excused for cause. Harris v. State, 178 Ga. App. 735, 344 S.E.2d 528 (1986).

Juror not improperly rehabilitated. — Trial court did not improperly rehabilitate a juror who stated that the juror would base the decision as to the defendant's guilt or innocence on the evidence presented at trial and not on the juror's prior experiences or perceived bias, but began equivocating about the juror's impartiality in response to questions from defendant's attorney; the court's question of whether the juror could listen to the evidence and decide the case based on what was heard from the witness stand did not constitute interrogation of the juror, and the one question merely confirmed that the juror's opinions and perceived bias were not so fixed as to warrant disqualification for cause. Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Fact that prospective jurors had been personally close to the murder victim and expressed some concern about judging the case impartially did not require their excusal for cause. Holmes v. State, 269 Ga. 124, 498 S.E.2d 732 (1998).

Juror improperly selected based on knowledge of defendant and victim. — Trial court committed reversible error

Existence of Prejudice or Bias (Cont'd)

for failing to disqualify a juror under O.C.G.A. § 15-12-164(a) since the juror was acquainted with the defendant, was friends with the victim, and had a detailed conversation with the victim about the rape, aggravated assault, and burglary allegedly committed by the defendant. The court's subsequent inquiry of the juror had the effect of eliciting the desired answers, rather than being a neutral attempt to determine the juror's impartiality. Cannon v. State, 250 Ga. App. 777, 552 S.E.2d 922 (2001), overruled on other grounds, Jackson v. State, 254 Ga. App. 562, 562 S.E.2d 847 (2002).

Peremptory challenges based on race. — Trial court erred in reseating a juror after the prosecution claimed the defendant used peremptory challenges based on race. Horton v. State, 252 Ga. App. 419, 556 S.E.2d 503 (2001); Ayiteyfio v. State, 254 Ga. App. 1, 561 S.E.2d 157 (2002), overruled in part by Gay v. State, 258 Ga. App. 634, 574 S.E.2d 861 (2002).

Refusal to allow question on bias toward state. — It was not error to refuse to allow defense counsel to ask upon voir dire whether prospective jurors had any tendency to believe police officers or witness for the state in preference to the accused, or, as rephrased upon objection, whether any juror had any bias or favor towards the testimony of a law enforcement officer. Morrison v. State, 155 Ga. App. 234, 270 S.E.2d 397 (1980).

Personal belief about handguns. — Cause for disqualification did not exist after the prospective juror stated a belief that there was a problem with the "system" of "too many handguns out there" and expressed concern that such belief might affect the juror's ability to be impartial, but, after questioning by the trial court, the juror responded that separation of the juror's personal belief about handguns from the job as a juror could be done and that the juror could base an impartial decision in the case on the evidence presented in the courtroom. Edmonds v. State, 275 Ga. 450, 569 S.E.2d 530 (2002).

Juror's contact with victim prejudiced defendant. — Trial court abused the court's discretion when the court denied the defendant's motion for mistrial because during a break in the proceedings but before the close of evidence, a juror initiated a conversation with the testifying victim, such that the juror alone had access to the victim's reaction to the juror's expressions of support, and the trial court never asked the juror what the victim's response had been and failed to examine the victim or the other jurors; the juror's unauthorized contact with the victim was intentional, no rehabilitation of the juror was possible, and the state failed to show that the defendant was not harmed by the misconduct. Fuller v. State, 313 Ga. App. 759, 722 S.E.2d 453 (2012).

Denial of challenge for cause because no bias found. — Trial court did not abuse the court's discretion when the court denied a defendant's motion to strike two jurors for cause based on the jurors' alleged bias because the jurors knew an officer who was involved as a witness in the defendant's criminal incident as the trial court propounded the statutory questions required by O.C.G.A. § 15-12-164(a) for a felony trial and did not limit trial counsel's ability to question the jurors; there was no evidence of bias, prejudice, or inability by the jurors to decide the case based on the evidence and the trial court's charge. Hornsby v. State, 296 Ga. App. 483, 675 S.E.2d 502 (2009).

Impaneling jurors who had been exposed to a newspaper article about the case was not erroneous because all of the jurors who were exposed indicated that they did not have a fixed opinion about the case and could render a fair, unbiased decision based solely on the evidence presented. Clay v. State, 322 Ga. App. 97, 744 S.E.2d 91 (2013).

Any error harmless. — In a child abuse case in which the defense counsel asked the panel of potential jurors whether the nature of the case would have made it difficult for anyone to serve on the jury and the trial court sustained the state's objection on the ground that defense counsel impermissibly asked potential jurors to prejudge the case in violation of O.C.G.A. § 15-12-133, the defendant was not prejudiced by any error as the state asked a similar question under

O.C.G.A. § 15-12-164(a)(2), and potential jurors were asked whether they had children or grandchildren, had foster children or operated a daycare center, or had received special training with respect to caring for children. Withrow v. State, 275 Ga. App. 110, 619 S.E.2d 714 (2005).

Impartiality

Juror stricken for cause when shown to be partial. — Although a juror may have been acceptable under O.C.G.A. § 15-12-164 when questioned by the court, the juror may be shown to be partial when questioned by the state or defense and if such showing is made, the juror should be stricken for cause. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981).

Discretion of trial court to determine impartiality. — Although the question of juror impartiality is a mixed question of law and fact, the trial court's findings of impartiality will be set aside only if "manifest" prejudice to the defendant has been shown. Jones v. State, 247 Ga. 268, 275 S.E.2d 67, cert. denied, 454 U.S. 817, 102 S. Ct. 94, 70 L. Ed. 2d 86 (1981).

Defendant's conviction for child molestation was affirmed because the trial court did not abuse the court's discretion in denying the defendant's motion to strike a potential juror who was the victim of child molestation at one time as the juror did not indicate any bias, prejudice, or partiality. However, granting the motion would have been the better practice. Doss v. State, 264 Ga. App. 205, 590 S.E.2d 208 (2003).

Examples of sufficient answers. Thomas v. State, 27 Ga. 287 (1859); Cato v. State, 72 Ga. 747 (1884).

Some doubt tolerable. — Fact that a potential juror may have some doubt as to the juror's impartiality, or complete freedom from all bias, does not demand as a matter of law that the juror be excused for cause. Greenway v. State, 207 Ga. App. 511, 428 S.E.2d 415 (1993).

Opposition to Capital Punishment

1. In General

Constitutionality. — Statutes, authorizing the interrogation of a juror in regard to the juror's opposition to capital punishment do not deny a person accused of a capital crime the right to a trial by an impartial jury; neither does it deny the accused due process of law, or the equal protection of the laws. Massey v. State, 222 Ga. 143, 149 S.E.2d 118, appeal dismissed, 385 U.S. 36, 87 S. Ct. 241, 17 L. Ed. 2d 36 (1966); Abrams v. State, 223 Ga. 216, 154 S.E.2d 443 (1967).

"Death-qualified" jury procedure does not violate the constitutional right to a jury trial. Chenault v. Stynchcombe, 581 F.2d 444 (5th Cir. 1978).

In a trial for felony murder, if no juror in the case was excused simply because the juror answered the question specified in paragraph (a)(4) of O.C.G.A. § 15-12-164 in the affirmative (or was declared competent in all respects simply because the juror answered in the negative), the defendant lacked standing to challenge the constitutionality of paragraph (a)(4). Jefferson v. State, 256 Ga. 821, 353 S.E.2d 468, cert. denied, 484 U.S. 872, 108 S. Ct. 203, 98 L. Ed. 2d 154 (1987).

Defendant lacked standing to challenge the constitutionality of the O.C.G.A. § 15-12-164(a)(4) question regarding conscientious objection to the death penalty because the death qualification voir dire in the case was more extensive and detailed than that provided by paragraph (a)(4) and the record indicated that no potential juror was excused or declared competent to serve based solely on his or her answer to the paragraph (a)(4) statutory question. Pruitt v. State, 270 Ga. 745, 514 S.E.2d 639 (1999), cert. denied, 528 U.S. 1006, 120 S. Ct. 502, 145 L. Ed. 2d 388 (1999).

Group questioning and nonverbal responses are permissible methods of determining whether jurors' attitudes toward the death penalty would either automatically cause the jurors to vote against the death penalty or prevent the jurors from impartially deciding the defendant's guilt. McCorquodale v. Balkcom, 721 F.2d 1493 (11th Cir. 1983), cert. denied, 466 U.S. 954, 104 S. Ct. 2161, 80 L. Ed. 2d 546 (1984).

If strike erroneous, death sentence must be vacated. — If one juror was erroneously struck for cause on the basis

Opposition to Capital Punishment (Cont'd)
1. In General (Cont'd)

of opposition to capital punishment, even though the state had one peremptory strike remaining when the twelfth juror was seated, the defendant's death sentence must be vacated, and the case remanded for imposition of a life sentence or resentencing in accordance with the law. Allen v. State, 248 Ga. 676, 286 S.E.2d 3 (1982).

Standing to raise constitutional challenge. — Since the record showed that voir dire in defendant's capital murder case was more extensive than that provided by paragraph (a)(4) of O.C.G.A. § 15-12-164, and no potential juror was excused from serving or declared competent to serve based solely on that paragraph, the defendant did not have standing to challenge § 15-12-164 on constitutional grounds. Jenkins v. State, 269 Ga. 282, 498 S.E.2d 502 (1998), cert. denied, 525 U.S. 968, 119 S. Ct. 416, 142 L. Ed. 2d 338 (1998); King v. State, 273 Ga. 258, 539 S.E.2d 783 (2000), cert. denied, 536 U.S. 957, 122 S. Ct. 2659, 153 L. Ed. 2d 834 (2002).

If party is not sentenced to death the party has no standing to complain of the use of paragraph (a)(4). Banks v. State, 246 Ga. 178, 269 S.E.2d 450 (1980).

Defendant may not raise an issue concerning a juror's ability to impose the death penalty on appeal when defendant was sentenced to life imprisonment rather than death. Wallace v. State, 246 Ga. 738, 273 S.E.2d 143 (1980), cert. denied, 451 U.S. 988, 101 S. Ct. 2325, 68 L. Ed. 2d 847 (1981).

Formal motion to dismiss by district attorney not necessary. — If jurors are incompetent to serve in a capital felony case, and the jurors' disqualification having been called to the attention of the court, it is not error to dismiss those jurors in the absence of a formal motion by the solicitor general (now district attorney). Curtis v. State, 224 Ga. 870, 165 S.E.2d 150 (1968).

No right to further questions after disqualification established. — If a juror's answers to questions concerning conscientious objection to the death penalty clearly disqualify the juror, the defendant is not entitled to further questioning as a matter of right, although the trial court may allow further questioning. Roberts v. State, 252 Ga. 227, 314 S.E.2d 83, cert. denied, 469 U.S. 873, 105 S. Ct. 228, 83 L. Ed. 2d 157 (1984).

2. When Juror May Be Excluded

Opposition to death penalty. — Trial court may constitutionally excuse prospective jurors who are opposed to the death penalty. Castell v. State, 250 Ga. 776, 301 S.E.2d 234 (1983), aff'd, 252 Ga. 418, 314 S.E.2d 210 (1984).

Trial court did not err by asking jurors a question on death penalty views prescribed by O.C.G.A. § 15-12-164(a)(4) because the statute allowed for follow-up questions by both parties, and the court did not err in excusing jurors in accordance with constitutional standards; the defendant lacked standing to challenge the constitutionality of § 15-12-164(c), because no prospective jurors were excused based on that statute. Stinski v. State, 286 Ga. 839, 691 S.E.2d 854, cert. denied, U.S. , 131 S. Ct. 522, 178 L. Ed. 2d 385 (2010).

Defendant's reaction to opposition to death penalty. — Once state clearly establishes a potential juror's unequivocal opposition to the death penalty, it is then incumbent upon the defendant to make an objection specifying why the juror should not be dismissed and to request further questions that would clarify any perceived ambiguity or equivocating by the juror. McCorquodale v. Balkcom, 721 F.2d 1493 (11th Cir. 1983), cert. denied, 466 U.S. 954, 104 S. Ct. 2161, 80 L. Ed. 2d 546 (1984).

Juror excluded if absolute opposition to death penalty. — State is not prevented from asserting the right to exclude from the jury any juror who states that the juror could never vote to impose the death penalty or that the juror would refuse even to consider the death penalty's imposition in the case before the juror. Massey v. Smith, 224 Ga. 721, 164 S.E.2d 786 (1968), cert. denied, 395 U.S. 912, 89 S. Ct. 1756, 23 L. Ed. 2d 225 (1969), later

appeal, Massey v. State, 229 Ga. 846, 195 S.E.2d 28 (1972).

Prospective jurors are properly excluded by the trial court who upon voir dire state that he or she could not impose the death penalty, regardless of the facts and circumstances that might emerge in the course of the proceedings. Collier v. State, 244 Ga. 553, 261 S.E.2d 364 (1979), cert. denied, 445 U.S. 946, 100 S. Ct. 1346, 63 L. Ed. 2d 781 (1980), overruled on other grounds, Satterfield v. State, 248 Ga. 538, 285 S.E.2d 3 (1981); Thompson v. State, 263 Ga. 23, 426 S.E.2d 895 (1993), overruled on other grounds, McClellan v. State, 274 Ga. 819, 561 S.E.2d 82 (2002).

In a capital case, a prospective juror who is opposed to the imposition of the death penalty under any circumstances is automatically removed by the trial judge "for cause." Chenault v. Stynchcombe, 581 F.2d 444 (5th Cir. 1978).

Prospective juror who indicates that the juror will not vote for the death penalty in the case, regardless of the facts, a prospective juror who says that the juror cannot impose the death penalty unless the juror had been an eyewitness to the crime (which the juror was not), and a prospective juror who says that, even though the juror favored the death penalty in some circumstances, the juror personally could never impose capital punishment were properly disqualified. Cobb v. State, 244 Ga. 344, 260 S.E.2d 60 (1979).

If jurors are disqualified in a murder and rape proceeding because of the jurors' reservations about capital punishment, the jurors are properly excused for cause, and the defendant is not deprived of the defendant's right to a jury selected from a representative cross-section of the community. Bowen v. State, 244 Ga. 495, 260 S.E.2d 855 (1979), cert. denied, 446 U.S. 970, 100 S. Ct. 2952, 64 L. Ed. 2d 831 (1980).

Veniremen who are irrevocably committed, before the trial has begun, to vote against the penalty of death regardless of the facts and circumstances that might emerge in the course of the trial, may be excluded for cause. Lewis v. State, 246 Ga. 101, 268 S.E.2d 915 (1980).

Juror excluded if reservations interfere with impartiality. — State has the right to challenge for cause any prospective juror who states that the juror's reservations about capital punishment would prevent the juror from making an impartial decision as to a defendant's guilt. Furthermore, the state is not prevented from asserting the right to exclude from the jury any juror who states that the juror could never vote to impose the death penalty or that the juror would refuse even to consider the death penalty's imposition in the case before the juror. Miller v. State, 224 Ga. 627, 163 S.E.2d 730 (1968).

State has the right to challenge for cause any prospective juror who states that the juror's reservations about capital punishment would prevent the juror from making an impartial decision as to a defendant's guilt of rape. Massey v. Smith, 224 Ga. 721, 164 S.E.2d 786 (1968), cert. denied, 395 U.S. 912, 89 S. Ct. 1756, 23 L. Ed. 2d 225 (1969).

Reluctance to weigh evidence in mitigation. — Trial court erred by ruling that a negative answer to the fourth statutory question was sufficient to qualify a prospective juror in all respects regarding the juror's attitudes toward the death penalty. A juror who has made up the juror's mind prior to trial that the juror will not weigh evidence in mitigation is not impartial. Such a juror's views on capital punishment would prevent or substantially impair the performance of the juror's duties as a juror in accordance with the juror's instructions and the juror's oath. In other words, an inability fairly to consider a life sentence is just as disqualifying as an inability fairly to consider a death sentence. Skipper v. State, 257 Ga. 802, 364 S.E.2d 835 (1988).

It is not sufficient that juror be willing to "consider" death penalty if he or she is committed to automatically vote against the death penalty after having "considered" the death penalty. The juror must be able to abide by existing law and be able to follow conscientiously the instructions of a trial judge and to consider fairly the imposition of the death sentence in a particular case. A trial judge does not err in refusing to allow defense counsel to examine the juror as to whether the juror would follow the instructions of the trial

Opposition to Capital Punishment (Cont'd)
2. When Juror May Be Excluded (Cont'd)

judge and "consider" sentencing the defendant to death, yet not vote for the death penalty after the juror indicated the juror's conscientious objection to the death penalty. Cofield v. State, 247 Ga. 98, 274 S.E.2d 530 (1981); Castell v. State, 250 Ga. 776, 301 S.E.2d 234 (1983), aff'd, 252 Ga. 418, 314 S.E.2d 210 (1984).

Opposition to death penalty on circumstantial evidence. — There was no error in causing two jurors to be set aside for cause who, upon their voir dire, stated that the jurors were opposed to capital punishment in cases dependent upon circumstantial evidence. Smith v. State, 146 Ga. 76, 90 S.E. 713 (1916).

No defendant on trial in this state under an indictment for murder has a right to be tried by jurors who are opposed to capital punishment upon circumstantial evidence. Aycock v. State, 188 Ga. 551, 4 S.E.2d 221 (1939).

If the voir dire questions in a case are dependent entirely upon circumstantial evidence but at the request of the defendant's counsel are supplemented by asking the jurors if the jurors are opposed to capital punishment when the evidence is circumstantial, and 12 jurors disqualify on this ground, the contention that these jurors were improperly excluded is without merit, particularly if objection is not made before trial, but only in the motion for new trial. Aycock v. State, 188 Ga. 551, 4 S.E.2d 221 (1939).

Only excluded for clear opposition. — Venireman who is excused must make it unmistakably clear: (1) that they would automatically vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before the veniremen; or (2) that the veniremen's attitude toward the death penalty would prevent the veniremen from making an impartial decision as to the defendant's guilt. Mason v. Balkcom, 487 F. Supp. 554 (M.D. Ga. 1980), rev'd on other grounds, 669 F.2d 222 (11th Cir. 1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1260, 75 L. Ed. 2d 487 (1983); Alderman v. Austin, 498 F. Supp. 1134 (S.D. Ga. 1980), aff'd in part, rev'd in part on other grounds, 663 F.2d 558 (11th Cir. 1982), on reh'g, 695 F.2d 124 (11th Cir. 1983); Cofield v. State, 247 Ga. 98, 274 S.E.2d 530 (1981).

Veniremen who are not irrevocably committed before the trial has begun to vote against the penalty of death regardless of the facts and circumstances cannot be excluded for cause simply because they indicate that there are some kinds of cases in which they would refuse to recommend capital punishment. Lewis v. State, 246 Ga. 101, 268 S.E.2d 915 (1980).

Cannot excuse for conscientious opposition. — Excusing for cause jurors who are conscientiously opposed to capital punishment is error. Miller v. State, 224 Ga. 627, 163 S.E.2d 730 (1968).

Excusal invalidates death sentence. — Sentence of death cannot be carried out if the jury that imposed the sentence was chosen by excluding jurors for cause because the jurors expressed conscientious scruples against the sentence's infliction. Dixon v. State, 224 Ga. 636, 163 S.E.2d 737 (1968).

Death sentence cannot constitutionally be executed if imposed by a jury when all persons on the panel who are opposed to capital punishment or have conscientious scruples against imposing the death penalty have been removed as disqualified for that reason alone. Thomas v. State, 118 Ga. App. 359, 163 S.E.2d 850 (1968), cert. denied, 394 U.S. 943, 89 S. Ct. 1273, 22 L. Ed. 2d 477 (1969); Clark v. Smith, 224 Ga. 766, 164 S.E.2d 790 (1968), rev'd on other grounds, 403 U.S. 946, 91 S. Ct. 2279, 29 L. Ed. 2d 859 (1971).

Peremptory challenges to exclude those opposed to death penalty. — When twelfth juror is selected and state has three peremptory challenges remaining, exclusion for cause of three complained of jurors for their opposition to capital punishment is harmless. Alderman v. State, 241 Ga. 496, 246 S.E.2d 642 (1978), cert. denied, 439 U.S. 991, 99 S. Ct. 593, 58 L. Ed. 2d 666 (1978), for comment, see 31 Mercer L. Rev. 349 (1979).

Conduct of Voir Dire

This section does not attempt to define voir dire, nor does the statute exclude by the statute's language all other questions not mentioned therein which may be asked the juror when put on the voir dire. Croft v. State, 73 Ga. App. 318, 36 S.E.2d 200 (1945).

Conduct of voir dire is within discretion of trial court, and the court's rulings are proper absent some manifest abuse of discretion. Westbrook v. State, 242 Ga. 151, 249 S.E.2d 524 (1978), cert. denied, 439 U.S. 1102, 99 S. Ct. 881, 59 L. Ed. 2d 63 (1979); Anderson v. State, 148 Ga. App. 683, 252 S.E.2d 187 (1979).

Whether to strike juror for cause lies within the discretion of the court. Westbrook v. State, 242 Ga. 151, 249 S.E.2d 524 (1978), cert. denied, 439 U.S. 1102, 99 S. Ct. 881, 59 L. Ed. 2d 63 (1979).

Whether to strike a juror for favor lies within the sound discretion of the trial court, and absent a manifest abuse of that discretion, appellate courts will not reverse. Harris v. State, 178 Ga. App. 735, 344 S.E.2d 528 (1986).

Questions not required in misdemeanor cases. — Although it is the better practice for the trial court or the prosecution to ask questions based on the language in subsection (a) of O.C.G.A. § 15-12-164 in all criminal cases, those questions must be asked only in felony cases. Jones v. State, 221 Ga. App. 374, 471 S.E.2d 318 (1996).

Statutory voir dire questions may be put to jurors as group over objection. Arnold v. State, 236 Ga. 534, 224 S.E.2d 386 (1976).

Statutory questions may be administered to the jury en masse in a felony case. Ivester v. State, 252 Ga. 333, 313 S.E.2d 674 (1984).

If the court addresses the questions presented in O.C.G.A. § 15-12-164(a) to prospective jurors en masse, there is no assignable error. Whittington v. State, 252 Ga. 168, 313 S.E.2d 73 (1984).

Statutory questions may be propounded by the court and explained. Dumas v. State, 65 Ga. 471 (1880); Nobles v. State, 127 Ga. 212, 56 S.E. 125 (1906).

Failure to inform of charges. — Court was not required to inform the prospective jurors of the charges against the defendant prior to their individual examination by defense counsel, although it is preferable to give them this context in which to consider the questions and their responses. The limits of discretion were not exceeded in the court's conduct of voir dire. Jackson v. State, 209 Ga. App. 217, 433 S.E.2d 655 (1993).

Qualification of jurors by prosecuting attorney. — Trial court can allow a prosecuting attorney to qualify jurors by putting to the jurors the statutory questions. Davis v. State, 189 Ga. App. 439, 376 S.E.2d 230 (1988).

It was not error for the court to permit the prosecutor to read the indictment, ask the first three questions set forth in O.C.G.A. § 15-12-164(a), and announce that the jurors appeared to be qualified. Robertson v. State, 268 Ga. 772, 493 S.E.2d 697 (1997), cert. denied, 523 U.S. 1140, 118 S. Ct. 1845, 140 L. Ed. 2d 1095 (1998).

In a burglary case, a court did not err by failing to order that voir dire be transcribed since the defendant did not request that voir dire be recorded, and the questions required under O.C.G.A. § 15-12-164 were transcribed and were included in the record on appeal. McConnell v. State, 263 Ga. App. 686, 589 S.E.2d 271 (2003).

Stenographer may be allowed to propound questions. West v. State, 79 Ga. 773, 4 S.E. 325 (1887).

Only statutory questions can be asked in the first instance. If the juror answers the statutory question satisfactorily, and is pronounced prima facie competent, and the parties put the juror before the court as trier, aliunde evidence of the untruthfulness of the juror's answers must be offered, and it is not competent to propound questions to the juror personally to show the juror's incompetency. It is within the province of the court to permit a further examination of the juror personally in rebuttal of the testimony offered to show the juror's incompetency. Herndon v. State, 178 Ga. 832, 174 S.E. 597 (1934), appeal dismissed, 295 U.S. 441, 55 S. Ct. 794, 79 L. Ed. 1530 (1935).

Neither counsel for the state nor for the defendant may as matter of right ask

Conduct of Voir Dire (Cont'd)

juror upon voir dire any other questions than those prescribed by statute. Herndon v. State, 178 Ga. 832, 174 S.E. 597 (1934), appeal dismissed, 295 U.S. 441, 55 S. Ct. 794, 79 L. Ed. 1530 (1935).

Challenge to poll only invokes right to ask juror questions prescribed, that is, the voir dire questions. Garner v. State, 67 Ga. App. 772, 21 S.E.2d 656 (1942).

Other questions may be asked by permission of court. Alford v. State, 137 Ga. 458, 73 S.E. 375 (1912); Lindsay v. State, 138 Ga. 818, 76 S.E. 369 (1912).

It is within discretion of trial court to ask other questions in addition to those prescribed by statute to test competency, fairness, or impartiality of prospective jurors. Bailey v. United States, 53 F.2d 982 (5th Cir. 1931).

Court to ask technical legal questions. — In the examination of prospective jurors, counsel may not ask technical legal questions or juror's opinions concerning technical legal questions. This is the duty of the trial court. Sprague v. State, 147 Ga. App. 347, 248 S.E.2d 711 (1978).

Question as to refusal to yield to argument or reason of fellow jurors. — Question on voir dire, calculated to elicit answers from prospective jurors that the jurors would never yield to the argument or reasoning of their fellow jurors, may be disallowed. Conner v. State, 160 Ga. App. 202, 286 S.E.2d 441 (1981).

Reliance on answers. — Defendant is entitled to rely on juror's answers on voir dire absent actual knowledge of incorrectness of those answers. Thomas v. State, 249 Ga. 339, 290 S.E.2d 462 (1982).

Misleading answer may not result in prejudice. — Defendant is entitled to be tried by a fair and impartial jury and to exercise knowledgeable challenges in the pursuit of this judicial ideal. It does not follow, however, that every incorrect answer given on voir dire calls inexorably for a new trial; the question of bias and resultant prejudice remains to be determined. If the answer was given in good faith with no deliberate intent to mislead, the trial court may well find that no prejudice resulted, even though the lack of disclosure might have impaired defendant's right to exercise a knowledgeable peremptory challenge. Jones v. State, 247 Ga. 268, 275 S.E.2d 67, cert. denied, 454 U.S. 817, 102 S. Ct. 94, 70 L. Ed. 2d 86 (1981).

Statement of prospective juror not prejudicial. — During voir dire examination, the statement of a prospective juror that the juror had arrested the defendant, without specifying what the arrest was for, was not so inherently prejudicial as to deny the defendant a fair trial. Hughey v. State, 180 Ga. App. 375, 348 S.E.2d 901 (1986).

Question of incapacity. — Principal challenge to poll is based on alleged facts from which juror is conclusively presumed to be incapacitated. The question principally raised is one of law and is to be decided by the court, and such decision is subject to review. Bowens v. State, 116 Ga. App. 577, 158 S.E.2d 420 (1967).

Challenges determined by juror's testimony. — Challenges to poll are to be tried by court on testimony of juror to exclusion of all other evidence. If the juror's answer is found to be true, the juror is disqualified per se. Cummings v. State, 226 Ga. 46, 172 S.E.2d 395 (1970), vacated on other grounds, 408 U.S. 935, 92 S. Ct. 2858, 33 L. Ed. 2d 751 (1972).

Evidence admissible as to truth of answers of jurors. — If the juror when put upon voir dire qualifies, either party then has the right to put the individual juror upon the court as a trier, and to submit any proof that will tend to illustrate the question of qualification. Humphries v. State, 100 Ga. 260, 28 S.E. 25 (1897); Wells v. State, 102 Ga. 658, 29 S.E. 442 (1897); Ford v. State, 12 Ga. App. 228, 76 S.E. 1079 (1913).

Words "shall have the right to introduce evidence," intimate that proof is to come from some other source than the juror personally. The court might sua sponte further interrogate the juror, but the party has no right to do this. Cummings v. State, 226 Ga. 46, 172 S.E.2d 395 (1970), vacated on other grounds, 408 U.S. 935, 92 S. Ct. 2858, 33 L. Ed. 2d 751 (1972).

Courts and juries are not bound to believe improbable facts. Patton v.

State, 117 Ga. 230, 43 S.E. 533 (1903).

Jury not purged before selection process. — It is not error in felony case for the court to refuse a motion to purge the jury as to disqualification before beginning to select a jury for trial. The statutes on the subject as applied to felony cases are different from those applicable to civil and misdemeanor cases. Gossett v. State, 203 Ga. 692, 48 S.E.2d 71 (1948), appeal dismissed, 214 Ga. 840, 108 S.E.2d 272 (1959).

Failure to record voir dire not error. — Failure to record and report the voir dire, absent the defendant's request and absent any showing of a specific instance of prejudice or harm therein is not reversible error. Morrison v. State, 155 Ga. App. 234, 270 S.E.2d 397 (1980).

Defendant's contention that possible error occurred during voir dire or defense counsel may have been ineffective and that, because of the lack of a record, defendant will never know if there was error was not a sufficient basis to require a new trial. Primas v. State, 231 Ga. App. 861, 501 S.E.2d 28 (1998).

Failure to record voir dire is error when death sentence imposed. — Failure to record voir dire in a case in which the sentence of death is imposed is reversible error. Castell v. State, 250 Ga. 776, 301 S.E.2d 234 (1983), aff'd, 252 Ga. 418, 314 S.E.2d 210 (1984).

Trial court did not err by granting state's challenge to juror. — See Mincey v. State, 251 Ga. 255, 304 S.E.2d 882 (1983), cert. denied, 464 U.S. 977, 104 S. Ct. 414, 78 L. Ed. 2d 352 (1983).

Refusal to strike a juror for cause was error. — Trial court erred in refusing to strike a juror for cause because, inter alia, the juror admitted that, based on the juror's experience interviewing child abuse and molestation victims, the juror was biased towards the child victim, and stated that the defendant would need to present evidence controverting the child's testimony to sway the juror's opinion; although the juror agreed, upon explicit questioning by the prosecutor, that child victims were not always truthful and indicated the juror's belief that the juror could render an impartial verdict, these responses were not determinative. After answering the prosecutor's inquiries, the juror again revealed a bias toward the child victim and stated that the defendant could not overcome that bias unless the defendant submitted contrary evidence. Garduno v. State, 299 Ga. App. 32, 682 S.E.2d 145 (2009).

Right to voir dire jurors may be waived by defendant; and if a jury is selected without any request being made by the defendant or defendant's counsel to have the jurors put upon their voir dire, this right is thereby waived. The fact that the defendant and defendant's counsel did not know that the jurors were not put upon their voir dire until after the verdict is not sufficient reason for granting a new trial, unless it appears that they could not have discovered the existence of the fact by the exercise of ordinary diligence. Smith v. State, 168 Ga. 611, 148 S.E. 531 (1929).

Defendant may forfeit defendant's right to voir dire conducted under oath by failing to timely assert that right. Gober v. State, 247 Ga. 652, 278 S.E.2d 386 (1981).

Must preserve voir dire objection for appeal. — To raise issue as to error in conduct of voir dire, objection must be made in trial court to preserve issue for appeal. State v. Graham, 246 Ga. 341, 271 S.E.2d 627 (1980).

Trial court did not err when the court posed the question to prospective jurors regarding whether the jurors had any ethical, moral, religious, or other beliefs that would not allow the jurors to sit in judgment of someone's guilt or innocence, and since the defendant failed to object to the question, the matter was not preserved for review. Walker v. State, 258 Ga. App. 333, 574 S.E.2d 400 (2002).

Objection to failure to ask questions required. — If the court's failure to ask the statutory voir dire questions contained in O.C.G.A. § 15-12-164 to the fourth panel of jurors was not brought to the court's attention at trial, there was no reversible error, since there had been no timely objection. Quick v. State, 256 Ga. 780, 353 S.E.2d 497 (1987).

Assuming defense counsel's performance was deficient for failing to object to the trial court's failure to ask the qualify-

Conduct of Voir Dire (Cont'd)

ing voir dire questions that are required by O.C.G.A. § 15-12-164(a), the defendant failed to show that the outcome of the trial would have been different had the trial court asked the statutory questions as the prosecutor asked the potential jurors whether the jurors were acquainted with the defendant or the victim, and, if so, whether the jurors could remain impartial. Since the potential jurors indicated no bias and defendant did not contend that any juror was, in fact, biased or prejudiced, the defendant failed to show ineffective assistance of trial counsel. Burnette v. State, 291 Ga. App. 504, 662 S.E.2d 272 (2008).

Error to use peremptory strikes for disqualified jurors. — When the defendant has to exhaust the defendant's peremptory strikes to excuse a juror who should have been excused for cause, that error is harmful. Logue v. State, 155 Ga. App. 476, 271 S.E.2d 42 (1980).

Referral to defendant as "the prisoner at the bar." — It is not error on voir dire to refer to the accused as "the prisoner at the bar." Leach v. State, 138 Ga. App. 274, 226 S.E.2d 78 (1976).

Asking jury if jury knew defendant, mentioned by name. — Defendant's conviction for aggravated assault was affirmed because the prosecutor was required to mention the defendant's name during voir dire, pursuant to O.C.G.A. §§ 15-12-163(b)(4) and 15-12-164(a)(2), to see if any of the jurors knew the defendant. Thus, there was no ground for a mistrial. Alexander v. State, 264 Ga. App. 251, 590 S.E.2d 233 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 167 et seq.

C.J.S. — 50A C.J.S., Juries, §§ 412 et seq., 473, 483 et seq.

ALR. — Betting on result as disqualifying juror, 2 ALR 813.

Membership in secret order or organization for the suppression of crime as proper subject of examination, or ground of challenge, of juror, 31 ALR 411; 158 ALR 1361.

Excusing qualified juror drawn in criminal case as ground of complaint by defendant, 96 ALR 508.

Prejudice against certain type of defense as ground of challenge for cause of juror in criminal case, 112 ALR 531.

Right of counsel in criminal case personally to conduct the voir dire examination of prospective jurors, 73 ALR2d 1187.

Disclosure in criminal case of juror's political, racial, religious, or national origin prejudice against accused or witnesses as ground for new trial or reversal, 91 ALR2d 1120.

Propriety and effect of asking prospective jurors hypothetical questions, on voir dire, as to how they would decide issues of case, 99 ALR2d 7.

Juror's presence at or participation in trial of criminal case (or related hearing) as ground of disqualification in subsequent criminal case involving same defendant, 6 ALR3d 519.

Beliefs regarding capital punishment as disqualifying juror in capital case — post-Witherspoon cases, 39 ALR3d 550.

Propriety, on voir dire in criminal case, of inquiries as to juror's possible prejudice if informed of defendant's prior convictions, 43 ALR3d 1081.

Jury: membership in racially biased or prejudiced organization as proper subject of voir dire inquiry or ground for challenge, 63 ALR3d 1052.

Juror's voir dire denial or nondisclosure of acquaintance or relationship with attorney in case, or with partner or associate of such attorney, as ground for new trial or mistrial, 64 ALR3d 126.

Similarity of occupation between proposed juror and alleged victim of crime as affecting juror's competency, 71 ALR3d 974.

Racial or ethnic prejudice of prospective jurors as proper subject of inquiry or ground of challenge on voir dire in state criminal case, 94 ALR3d 15.

Religious belief, affiliation, or prejudice of prospective jurors as proper subject of inquiry or grounds for challenge on voir dire, 95 ALR3d 172.

Validity and construction of statute or court rule prescribing number of peremptory challenges in criminal cases according to nature of offense or extent of punishment, 8 ALR4th 149.

Necessity for presence of judge during voir dire examination of prospective jurors in state criminal case, 39 ALR4th 465.

Juror's reading of newspaper account of trial in state criminal case during its progress as ground for mistrial, new trial, or reversal, 46 ALR4th 11.

Cure of prejudice resulting from statement by prospective juror during voir dire, in presence of other prospective jurors, as to defendant's guilt, 50 ALR4th 969.

Professional or business relations between proposed juror and attorney as ground for challenge for cause, 52 ALR4th 964.

Fact that juror in criminal case, or juror's relative or friend, has previously been victim of criminal incident as ground of disqualification, 65 ALR4th 743.

Propriety of inquiry on voir dire as to juror's attitude toward or acquaintance with literature dealing with amount of damage awards, 63 ALR5th 285.

Examination and challenge of federal case jurors on basis of attitudes toward homosexuality, 85 ALR Fed. 864.

15-12-165. Number of peremptory challenges.

Every person accused of a felony may peremptorily challenge nine of the jurors impaneled to try him or her. The state shall be allowed the same number of peremptory challenges allowed to the accused; provided, however, that in any case in which the state announces its intention to seek the death penalty, the accused may peremptorily challenge 15 jurors and the state shall be allowed the same number of peremptory challenges. (Laws 1833, Cobb's 1851 Digest, p. 835; Code 1863, § 4530; Code 1868, § 4549; Code 1873, § 4643; Code 1882, § 4643; Penal Code 1895, § 974; Penal Code 1910, § 1000; Code 1933, § 59-805; Ga. L. 1992, p. 1981, § 2; Ga. L. 2005, p. 20, § 7/HB 170; Ga. L. 2011, p. 59, § 1-59/HB 415.)

Cross references. — Number of strikes allowed to defendants jointly indicted and tried for capital offense, § 17-8-4.

Editor's notes. — Ga. L. 2005, p. 20, § 1/HB 170, not codified by the General Assembly, provides that: "This act shall be known and may be cited as the 'Criminal Justice Act of 2005.'"

Ga. L. 2005, p. 20, § 17/HB 170, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all trials which commence on or after July 1, 2005.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For article on 2005 amendment of this Code section, see 22 Ga. St. U.L. Rev. 29 (2005). For annual survey of death penalty decisions, see 57 Mercer L. Rev. 139 (2005); 58 Mercer L. Rev. 111 (2006).

For note, "Toward an Integrated Rule Prohibiting All Race-Based Peremptory Challenges: Some Considerations on Georgia v. McCollum," see 26 Ga. L. Rev. 503 (1992).

For comment on Alderman v. State, 241 Ga. 496, 246 S.E.2d 642, cert. denied, 439 U.S. 991, 99 S. Ct. 593, 58 L. Ed. 2d 666 (1978), see 31 Mercer L. Rev. 349 (1979).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
NUMBER
EXCUSAL FOR CAUSE

General Consideration

Constitutionality. — Law provides a remedy for jurors who are struck for illegal reasons by the defense so O.C.G.A. § 15-12-165 is not unconstitutional; an order of a trial court finding otherwise was reversed. Robinson v. State, 278 Ga. 134, 598 S.E.2d 466 (2004).

Constitutionality of application of amendment reducing number of challenges. — Application to the defendant of the statutory amendment reducing the number of criminal defendant's peremptory strikes did not violate the constitutional prohibition against ex post facto laws. Stargel v. State, 210 Ga. App. 619, 436 S.E.2d 786 (1993).

Retroactive application valid. — Retroactive application of the amended reduction of the number of peremptory strikes from 20 to 12 did not violate the ex post facto clause as the number of peremptory challenges is solely a matter of procedure. Seats v. State, 210 Ga. App. 74, 435 S.E.2d 286 (1993).

Peremptory challenge is arbitrary and capricious species of challenge to certain number of jurors without showing any cause. Watkins v. State, 199 Ga. 81, 33 S.E.2d 325 (1945); Hobbs v. State, 229 Ga. 556, 192 S.E.2d 903 (1972); Pippin v. State, 151 Ga. App. 225, 259 S.E.2d 488 (1979).

No reason need be shown for exercise of right to peremptory challenge. Willis v. State, 243 Ga. 185, 253 S.E.2d 70, cert. denied, 444 U.S. 885, 100 S. Ct. 178, 62 L. Ed. 2d 116 (1979); Pippin v. State, 151 Ga. App. 225, 259 S.E.2d 488 (1979).

Peremptory challenges may be exercised by either the state or the accused without giving any reason therefor; and exercising this statutory right in any particular way is not cause for a mistrial. Plummer v. State, 229 Ga. 749, 194 S.E.2d 419 (1972).

Sheriff's excusal of jurors violates defendant's rights. — Excusal of five prospective jurors by the sheriff as the chief law enforcement officer in the county and as a direct participant in the trial was a violation of the integrity of the jury selection process, and constitutes an alteration of the array of traverse jurors to such an extent as to deprive the defendant of the defendant's proportional share of peremptory strikes. Joyner v. State, 251 Ga. 84, 303 S.E.2d 106 (1983).

District attorney may use peremptory challenges in the attorney's discretion. Willis v. State, 243 Ga. 185, 253 S.E.2d 70, cert. denied, 444 U.S. 885, 100 S. Ct. 178, 62 L. Ed. 2d 116 (1979).

Juror peremptorily stricken may be used later. — If a juror is impaneled to try a defendant for a criminal offense and is peremptorily challenged by the defendant, the juror is not so disqualified that the juror cannot again be impaneled at a subsequent trial for the same offense under the same indictment on the grounds that the defendant would thereby be deprived of the defendant's full 20 (now 12) strikes, or because it would deny to the defendant the constitutional right of a fair and impartial trial and equal protection of the laws. Cady v. State, 198 Ga. 99, 31 S.E.2d 38, appeal dismissed and cert. denied, 323 U.S. 676, 65 S. Ct. 190, 89 L. Ed. 549 (1944).

Returning veniremen peremptorily excused earlier to juror pool. — Defendants were not deprived of their proportional share of peremptory strikes even though veniremen who were peremptorily excused by the prosecutor in a previous trial were returned to the panel of prospective jurors for defendants' trial. If anything, by returning to the jury pool veniremen already once rejected by the prosecutor, the practice discriminated against the prosecutor by forcing the prosecutor to choose from among veniremen the prosecutor had already challenged. Davis v. State, 194 Ga. App. 482, 391 S.E.2d 124 (1990).

If first panel of jurors is exhausted, striking of jurors cannot proceed until second full panel of jurors has been completed. Cady v. State, 198 Ga. 99, 31 S.E.2d 38, appeal dismissed and cert. denied, 323 U.S. 676, 65 S. Ct. 190, 89 L. Ed. 549 (1944).

Presumption that challenges used properly. — Presumption is that prosecutor is using state's challenges to obtain fair, impartial jury to try the case. The presumption is not overcome and the prosecutor therefore subjected to examination by allegations that all blacks were removed from the jury or that they were removed because they were blacks. Jackson v. Hopper, 232 Ga. 419, 207 S.E.2d 58 (1974).

Race-neutral reasons for peremptory strikes. — State supreme court upheld trial court's judgment granting prosecutor's motions to strike two prospective jurors who were the same race as defendant on the basis of the prosecutor's rationale that one juror was inattentive and uninterested in the process and appeared to be frustrated with the answers given by another prospective juror, and that the other juror slept constantly during voir dire and had a son who was pending prosecution. Trigger v. State, 275 Ga. 512, 570 S.E.2d 323 (2002), overruled on other grounds, Wilson v. State, 277 Ga. 195, 586 S.E.2d 669 (2003).

Defendant failed to show that the trial court erred in finding that the defendant's race-neutral explanation for peremptorily striking a venireperson was pretextual; moreover, the defendant could not complain of the trial court's remedy, which was to remove the last juror chosen, make that juror the first alternate, and place the venireperson in question on the jury because the defendant had expressly agreed with it. Stokes v. State, 281 Ga. 825, 642 S.E.2d 82 (2007).

Striking all blacks not, per se, unconstitutional. — Peremptory striking of all black prospective jurors in a case is not per se a denial of equal protection, but the presumption protecting the prosecutor may well be overcome by proof of systematic exclusion of black jurors by use of peremptory challenges by the district attorney resulting in no blacks ever serving on petit juries in that circuit. Blackwell v. State, 248 Ga. 138, 281 S.E.2d 599 (1981).

Race neutral reason for striking jurors not provided. — Trial court clearly erred in accepting the state's explanations for striking four of the five African-American male jurors as race-neutral since: (1) the first juror was stricken for having an unstable job history, which was not supported by the record; (2) the second juror was stricken for wearing an earring, without an explanation as to how this affected the juror's ability to be impartial, and a caucasian juror wearing an earring was accepted; (3) the state mischaracterized the third juror's testimony that the juror intended to go to Panama City to have a good time, when the juror testified that the juror was going on a family vacation before returning to college; and (4) the fourth juror was stricken to reach other jurors, which could not defeat a Batson claim. George v. State, 263 Ga. App. 541, 588 S.E.2d 312 (2003).

Time for raising claim of racial discrimination. — Since the record reflected that following voir dire, the jury was selected, sworn, given preliminary instructions by the trial court, and excused for lunch; and, following the recess and a lengthy hearing on an unrelated defense motion, the defendant moved for a mistrial, claiming that defendant's constitutional rights had been violated by the prosecutor's use of peremptory challenges to exclude blacks from the jury panel, since there were no judicial guidelines regarding the time and manner in which such a claim was to be presented, and since the defendant's motion in this regard was made relatively promptly in the course of the proceedings, the motion was timely made for purposes of that case. Hereafter, however, any claim under Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), will have to be raised prior to the time the jurors selected to try the case were sworn. State v. Sparks, 257 Ga. 97, 355 S.E.2d 658 (1987).

Peremptory challenges by criminal defendant. — Constitution prohibits a criminal defendant from engaging in purposeful discrimination on the ground of race in the exercise of peremptory chal-

General Consideration (Cont'd)

lenges. Accordingly, if the state demonstrates a prima facie case of racial discrimination by the defendants, the defendants must articulate a racially neutral explanation for peremptory challenges. Georgia v. McCollum, 505 U.S. 42, 112 S. Ct. 2348, 120 L. Ed. 2d 33 (1992), rev'g, 261 Ga. 473, 405 S.E.2d 688 (1988).

Invited error by defense counsel. — Any error in the application of O.C.G.A. § 15-12-165, with regard to the defendant's trial for murder, was invited by defense counsel and, as such, was not grounds for reversal. Rogers v. State, 282 Ga. 659, 653 S.E.2d 31 (2007), cert. denied, 552 U.S. 1311, 128 S. Ct. 1882, 170 L. Ed. 2d 747; reh'g denied, 554 U.S. 930, 128 S. Ct. 2988, 171 L. Ed. 2d 907 (2008).

Misunderstanding regarding number of peremptory challenges not ineffective assistance. — Defendant failed to carry the defendant's burden of showing that the defendant was actually prejudiced by the defendant's lawyer's misunderstanding about the number of peremptory challenges to which the defendant was entitled under O.C.G.A. § 15-12-165 and, therefore, the trial court did not err in denying the defendant's motion for a new trial based on ineffective assistance of counsel. Shields v. State, 307 Ga. App. 830, 706 S.E.2d 187 (2011).

Use of all strikes required. — Because the defendant exercised only eight of the nine peremptory strikes authorized by O.C.G.A. § 15-12-165, such was one reason for the appellate court not to reverse the trial court's order overruling a motion for a change of venue. Phillips v. State, 284 Ga. App. 224, 644 S.E.2d 153 (2007).

Cited in Cruce v. State, 59 Ga. 83 (1877); Butler v. State, 92 Ga. 601, 19 S.E. 51 (1893); Cumming v. State, 99 Ga. 662, 27 S.E. 177 (1896); Nobles v. State, 12 Ga. App. 355, 77 S.E. 184 (1913); Curry v. State, 17 Ga. App. 377, 87 S.E. 685 (1915); Herndon v. State, 178 Ga. 832, 174 S.E. 597 (1934); Hooks v. State, 215 Ga. 869, 114 S.E.2d 6 (1960); Thacker v. State, 226 Ga. 170, 173 S.E.2d 186 (1970); Munsford v. State, 129 Ga. App. 547, 199 S.E.2d 843 (1973); Geiger v. State, 129 Ga. App. 488, 199 S.E.2d 861 (1973); Cauley v. State, 130 Ga. App. 278, 203 S.E.2d 239 (1973); Rucker v. State, 135 Ga. App. 468, 218 S.E.2d 146 (1975); Jones v. State, 137 Ga. App. 612, 224 S.E.2d 473 (1976); Gatlin v. State, 236 Ga. 707, 225 S.E.2d 224 (1976); Dorsey v. State, 236 Ga. 591, 225 S.E.2d 418 (1976); Maddox v. State, 145 Ga. App. 363, 243 S.E.2d 740 (1978); Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981); Blankenship v. State, 247 Ga. 590, 280 S.E.2d 623 (1981); Whittington v. State, 252 Ga. 168, 313 S.E.2d 73 (1984); Curry v. State, 255 Ga. 215, 336 S.E.2d 762 (1985); Leeks v. State, 188 Ga. App. 625, 373 S.E.2d 777 (1988); Hood v. State, 245 Ga. App. 391, 537 S.E.2d 788 (2000); Chandler v. State, 281 Ga. 712, 642 S.E.2d 646 (2007); Dixon v. State, 285 Ga. 312, 677 S.E.2d 76 (2009); Stinski v. State, 286 Ga. 839, 691 S.E.2d 854 (2010); Barmore v. State, 323 Ga. App. 377, 746 S.E.2d 289 (2013).

Number

Application of amended provisions. — Since strikes are procedural and not substantive in nature, the defendant was not deprived of any protected right by the application of the amended version of O.C.G.A. § 15-12-165 regardless of whether such application was retroactive. Barner v. State, 263 Ga. 365, 434 S.E.2d 484 (1993).

Defendant made a constitutional challenge to the retrospective application of three provisions of the Criminal Justice Act, Ga. Laws 2005, p. 20 (Act). No reversible error resulted from challenges to the closing arguments or admission of character evidence as: (1) the former was not distinctly ruled upon by the lower court; and (2) the lower court sustained objections to the admissibility of character evidence. Thus, the state could not introduce character evidence regarding the defendant's prior criminal convictions. Moreover, a change in the number of the defendant's peremptory challenges by the Act did not affect any protected right by the application of the amended version of O.C.G.A. § 15-12-165, as strikes were procedural and not substantive in nature. Madison v. State, 281 Ga. 640, 641 S.E.2d 789 (2007).

Because the exercise of peremptory challenges was procedural and not an independent substantive right, the trial court's application of the amended version of O.C.G.A. § 15-12-165 at the time of trial could not have violated any constitutional prohibition against ex post facto laws. Newman v. State, 286 Ga. App. 353, 649 S.E.2d 349 (2007).

Maximum sentence possible determines number of peremptory challenges allowed. Lowe v. State, 133 Ga. App. 420, 210 S.E.2d 869 (1974).

Maximum time of imprisonment in the penitentiary for a particular charge determines the number of peremptory challenges allowed. Bailey v. State, 233 Ga. 452, 212 S.E.2d 1 (1975).

Maximum time of imprisonment not total of charges determines number of peremptory challenges. — This section does not apply to a case if the defendant is indicted in more than one count and if none of the counts charge defendant with an offense punishable by four years or more imprisonment in the penitentiary. The maximum time of imprisonment in the penitentiary for a particular charge determines the number of peremptory challenges allowed, rather than the total of all charges. Harvey v. State, 128 Ga. App. 844, 198 S.E.2d 323 (1973).

Term "not less than four years" includes amount of exactly four years. Arnold v. State, 86 Ga. App. 160, 71 S.E.2d 102 (1952); Lowe v. State, 133 Ga. App. 420, 210 S.E.2d 869 (1974) (decided prior to 1992 amendment).

Multiple challenges unauthorized for multiple offenses. — Defendant is not entitled to additional peremptory challenges from the fact that the indictment contains several counts charging separate and distinct offenses joinable in the same indictment. Meriwether v. State, 63 Ga. App. 667, 11 S.E.2d 816 (1940).

indictment that contains more than one charge in several counts does not authorize an increase in the number of peremptory challenges allotted the defendant and this rule applies equally to a trial upon multiple offenses. Callahan v. State, 229 Ga. 737, 194 S.E.2d 431 (1972).

Joint defendants entitled to only 20 (now nine) strikes. — When former Code 1933, §§ 27-2101 and 59-805 (see now O.C.G.A. §§ 15-12-165 and 17-8-4) were construed in pari materia, joint defendants in the same case were entitled to a total of 20 (now nine) strikes to be exercised by all of the defendants. Allen v. State, 235 Ga. 709, 221 S.E.2d 405 (1975).

Former Code 1933, § 27-2101 (see now O.C.G.A. § 17-8-4), which must be construed in pari materia with former Code 1933, § 59-805 (see now O.C.G.A. § 15-12-165), allowed only a total of 20 (now 12) peremptory challenges to two or more defendants when tried jointly. Taylor v. State, 140 Ga. App. 447, 231 S.E.2d 364 (1976).

More strikes allowed. — Under former Code 1933, § 27-2101 (see now O.C.G.A. § 17-8-4), if more than two defendants were indicted and tried jointly, it did not mean that some of the defendants would have no strikes since the trial judge was allowed to allot up to five additional strikes per defendant in excess of the number of strikes specified in former Code 1933, § 59-805 (see now O.C.G.A. § 15-12-165). Albert v. State, 235 Ga. 718, 221 S.E.2d 413 (1975).

More strikes denied. — Trial court did not err by refusing to grant a defendant more than 15 peremptory strikes. Thomason v. State, 281 Ga. 429, 637 S.E.2d 639 (2006).

Harmless error for trial court to insist on qualifying 60 prospective jurors instead of 54. — With regard to a defendant's conviction for malice murder and other crimes, while the trial court acknowledged that a panel of 54 jurors was required for selection of the jury and four alternates, the court's insistence on qualifying 60 prospective jurors was harmless error as any error regarding a juror qualified 55 or later on the panel was of no significance since it would have been impossible for those jurors to have been reached during the selection of either the jury or the alternate jurors, and the state and the defense were each allotted four additional peremptory challenges for the purpose of selecting four alternate jurors. O'Kelley v. State, 284 Ga. 758, 670 S.E.2d 388 (2008).

Error in qualification of jurors harmless. — Any error in the qualifica-

Number (Cont'd)

tion of Jurors 45 and 80 was harmless as a matter of law because the jury was struck from a panel of 49 potential jurors and the 31st juror to be qualified was Juror 42; it takes a qualified panel of 30 (nine defense strikes plus nine state strikes plus 12 jurors) to select a jury and any juror qualified beyond the 31st juror on the panel is harmless. Huckabee v. State, 287 Ga. 728, 699 S.E.2d 531 (2010).

Court properly granted state two additional jury strikes after giving defendants four additional strikes, two for each defendant. While it is true that O.C.G.A. § 17-8-4 is silent on the question of additional strikes for the state, the statute is to be construed in pari materia with O.C.G.A. § 15-12-165, which provides that the state "shall be allowed one-half the number of peremptory challenges allowed to the accused." Gerald v. State, 189 Ga. App. 155, 375 S.E.2d 134 (1988).

Excusal for Cause

Failure to excuse for cause harmful error. — When the defendant in a felony trial has to exhaust defendant's peremptory strikes to excuse a juror who should have been excused for cause, the error is harmful. Logue v. State, 155 Ga. App. 476, 271 S.E.2d 42 (1980).

Unless peremptory strikes remain. — If it does not affirmatively appear from the record that a party exhausted the party's peremptory challenges at the time the full panel of jurors was accepted and sworn, the appellate court will presume that the party was not prejudiced by the action of the court in erroneously disallowing the party's challenge for cause, and will not grant a reversal for the alleged error. Finney v. State, 241 Ga. 582, 250 S.E.2d 388 (1978), cert. denied, 441 U.S. 916, 99 S. Ct. 2017, 60 L. Ed. 2d 388 (1979); King v. State, 177 Ga. App. 788, 341 S.E.2d 307 (1986).

Wrongful exclusion for cause. — When the twelfth juror is selected and the state has three peremptory challenges remaining, the prior exclusion for cause of three jurors for their opposition to capital punishment is harmless. Alderman v. State, 241 Ga. 496, 246 S.E.2d 642, cert. denied, 439 U.S. 991, 99 S. Ct. 593, 58 L. Ed. 2d 666 (1978), for comment, see 31 Mercer L. Rev. 349 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Unused peremptory challenges may not be used as to alternate jurors. — In selecting alternate jurors under O.C.G.A. § 15-12-169, the parties are not entitled to utilize unused O.C.G.A. § 15-12-165 peremptory challenges as additional peremptory challenges to the alternate jurors. 1993 Op. Att'y Gen. No. U93-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 21A Am. Jur. 2d, Criminal Law, § 990.

47 Am. Jur. 2d, Jury, § 206 et seq.

C.J.S. — 50A C.J.S., Juries, §§ 431 et seq., 473, 483 et seq.

ALR. — Excusing qualified juror drawn in criminal case as ground of complaint by defendant, 96 ALR 508.

Right to peremptory challenges in selection of jury to try issue of former conviction, 162 ALR 429.

Peremptory challenge after acceptance of juror, 3 ALR2d 499.

Effect of allowing excessive number of peremptory challenges, 95 ALR2d 957.

Jury: number of peremptory challenges allowed in criminal case, where there are two or more defendants tried together, 21 ALR3d 725.

Jury: membership in racially biased or prejudiced organization as proper subject of voir dire inquiry or ground for challenge, 63 ALR3d 1052.

Racial or ethnic prejudice of prospective jurors as proper subject of inquiry or

ground of challenge on voir dire in state criminal case, 94 ALR3d 15.

Additional peremptory challenges because of multiple criminal charges, 5 ALR4th 533.

Deafness of juror as ground for impeaching verdict, or securing new trial or reversal on appeal, 38 ALR4th 1170.

Use of peremptory challenges to exclude Caucasian persons, as a racial group, from criminal jury — post Batson state cases, 20 ALR5th 398; 47 ALR5th 259.

15-12-166. Jurors not challenged to be sworn.

If a juror is found competent and is not challenged peremptorily by the state, he shall be put upon the accused. Unless he is challenged peremptorily by the accused, the juror shall be sworn to try the case. (Ga. L. 1855-56, p. 229, § 11; Code 1863, § 4571; Code 1868, § 4591; Code 1873, § 4684; Code 1882, § 4684; Penal Code 1895, § 977; Penal Code 1910, § 1003; Code 1933, § 59-808.)

JUDICIAL DECISIONS

State cannot change state's mind after acceptance by both sides. — This section requires that a juror, after acceptance by both the state and the defense, shall be sworn (unless for cause such as sickness) and that the state, after the state discovers the defense accepts a juror, cannot then change the state's mind and excuse the juror. Sakobie v. State, 115 Ga. App. 460, 154 S.E.2d 830 (1967).

Excusing juror for sickness after the juror has been accepted but not sworn is no ground for new trial. Cason v. State, 134 Ga. 786, 68 S.E. 554 (1910).

New trial not required by striking of accepted juror. — Defendant was not entitled to a new trial since the trial court corrected the clerk's mistaken assertion that the state had used all of the state's peremptory strikes, even though such correction allowed the state to peremptorily strike a juror already accepted by defense counsel. Thompkins v. State, 181 Ga. App. 158, 351 S.E.2d 475 (1986).

There is no error in postponing swearing jurors in chief until full panel of 12 is obtained. Roberts v. State, 65 Ga. 430 (1880).

Impact of failure to record intention to strike juror. — With regard to defendant's trial and conviction on one count of armed robbery, the trial court did not abuse the court's discretion in allowing the state to strike a juror after the entire panel had been selected as the state mistakenly failed to record the state's intention to strike a juror, and the prosecutor promptly recognized the mistake and informed the trial court, who had the discretion to then allow the state to exercise one of the state's remaining strikes to excuse the juror. Cox v. State, 293 Ga. App. 98, 666 S.E.2d 379 (2008).

Cited in Blankenship v. State, 247 Ga. 590, 280 S.E.2d 623 (1981); Leeks v. State, 188 Ga. App. 625, 373 S.E.2d 777 (1988); Rogers v. State, 282 Ga. 659, 653 S.E.2d 31 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 191 et seq.

C.J.S. — 50A C.J.S., Juries, § 520 et seq.

15-12-167. Time for challenge and hearing thereon.

If known to a party or his counsel, any objections to a juror for cause shall be made before the juror is sworn in the case. After a juror has

been found competent, no other or further investigation before triers or otherwise shall be had, provided that newly discovered evidence to disprove the juror's answer or to show him incompetent may be heard by the judge at any time before the prosecuting counsel submits any of his evidence in the case. If the juror is proved incompetent, the judge shall order him to withdraw from the jury and shall cause another juror to be selected. (Ga. L. 1855-56, p. 229, §§ 8, 9; Code 1863, §§ 4568, 4572; Code 1868, §§ 4588, 4592; Code 1873, §§ 4681, 4685; Code 1882, §§ 4681, 4685; Penal Code 1895, §§ 973, 978; Penal Code 1910, §§ 999, 1004; Code 1933, §§ 59-804, 59-809.)

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Constitutionality. — Machinery provided for testing the juror's competency meets all constitutional requirements. Herndon v. State, 178 Ga. 832, 174 S.E. 597 (1934), appeal dismissed, 295 U.S. 441, 55 S. Ct. 794, 79 L. Ed. 1530 (1935).

Construction with other statutes. — O.C.G.A. § 15-12-167 must be balanced with two other considerations: (1) the general authority under O.C.G.A. § 15-12-172 to discharge a juror at any time for illness, inability to perform duty, or other legal cause; and (2) the defendant's failure to show how the defendant was prejudiced by use of an alternate since under O.C.G.A. § 15-12-169 alternates are qualified in the same manner as the selected jurors. Payne v. State, 195 Ga. App. 523, 394 S.E.2d 781 (1990); Reynolds v. State, 271 Ga. 174, 517 S.E.2d 51 (1999).

Section is permissive. — No inflexible rule is set forth in this section for selecting another juror; this section is permissive only. Jones v. State, 232 Ga. 324, 206 S.E.2d 481 (1974).

This section is permissive, rather than mandatory. Jones v. Anderson, 404 F. Supp. 182 (S.D. Ga. 1974), aff'd, 522 F.2d 181 (5th Cir. 1975).

This section permits impeachment of juror based on newly discovered evidence before submission of evidence on the main issue. Wesley v. State, 65 Ga. 731 (1880); Warnack v. State, 7 Ga. App. 73, 66 S.E. 393 (1909); Lindsay v. State, 138 Ga. 818, 76 S.E. 369 (1912).

State has the same rights hereunder as the accused. Eberhart v. State, 47 Ga. 598 (1873); Holton v. State, 137 Ga. 86, 72 S.E. 949 (1911).

When question should be raised. — If the incompetency of jurors was known to counsel after the jury was sworn but before any further step in the trial is taken, the question as to competency should then be raised. Lampkin v. State, 87 Ga. 516, 13 S.E. 523 (1891); Simmons v. State, 88 Ga. 272, 14 S.E. 613 (1892).

Delay in raising issue constituted waiver. — Defendant waived error by the trial judge in questioning and dismissing a potential juror out of defendant's presence since the defendant was advised after the judge returned to the courtroom that the juror had been excused, yet made no objection until further voir dire was completed and the jury was selected and sworn. Harmon v. State, 224 Ga. App. 890, 482 S.E.2d 730 (1997).

Challenge for cause may be made after jury sworn, if ground unknown until then. Hart v. State, 157 Ga. App. 716, 278 S.E.2d 419 (1981).

Question of competency and impartiality of jurors is to be determined after process of selecting jury has commenced. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934); Gossett v. State, 203 Ga. 692, 48 S.E.2d 71 (1948), appeal dismissed, 214 Ga. 840, 108 S.E.2d 272 (1959).

Court may refuse to purge jury before selection. — It is not error for the court to refuse a motion to purge the jury as to disqualification before beginning to select a jury for trial, the statutes on the subject as applied to felony cases being different from those in reference to civil and misdemeanor cases. Gossett v. State, 203 Ga. 692, 48 S.E.2d 71 (1948), appeal

dismissed, 214 Ga. 840, 108 S.E.2d 272 (1959).

Challenge untimely. — Although the defense counsel observed during voir dire that some of the jurors wore red ribbons in support of the anti-drug rally, it was not until after the jury was selected and sworn that the defense counsel raised the question of the jury's partiality resulting from the rally; therefore, the challenge of the jury's impartiality was untimely. Harris v. State, 212 Ga. App. 120, 441 S.E.2d 255 (1994).

Alleged hostility of a juror was manifest immediately after it was announced that the juror was chosen and the defendant should have raised the matter at that time, before the jury was sworn. Kelly v. State, 255 Ga. App. 813, 567 S.E.2d 36 (2002).

Because any evidence of a juror's bias against the defendant, when the juror was a second cousin to the mother of the defendant's children and had previously answered the phone when the defendant called, was known to defendant well before the juror was sworn; therefore, the defendant's claim of newly discovered evidence brought after the jury was seated was improper. Wilmore v. State, 268 Ga. App. 646, 602 S.E.2d 343 (2004).

Disqualification may be waived. — If an accused or the accused's counsel had knowledge of the disqualification of a petit juror, in that the juror had served on the grand jury, or by proper diligence could have ascertained the fact, and interposed no objection in the trial court, the accused is deemed to have waived the disqualification. Green v. Caldwell, 229 Ga. 650, 193 S.E.2d 847 (1972).

If the defendant did not move to excuse jurors, the defendant waived any error by the trial court in failing to excuse two prospective jurors for cause. Hughes v. State, 217 Ga. App. 766, 458 S.E.2d 911 (1995).

Failure to object to familial relationship. — If defense counsel was present during the entire voir dire, yet failed to object to the trial judge's failure to qualify prospective jurors as to a potential familial relation to the deceased victim, a ground for a challenge for cause under O.C.G.A. § 15-12-167, this was a waiver and constitutes induced error. McKenzie v. State, 248 Ga. 294, 282 S.E.2d 95 (1981), overruled on other grounds, O'Kelley v. State, 284 Ga. 758, 670 S.E.2d 388 (2008).

Trial vitiated by disqualification. — It is disqualification of juror itself and not refusal to make inquiry of juror which will vitiate the trial. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934).

Defendant not required to investigate potential jurors. — Defendant in felony case is not required to make previous investigations out of court to determine whether jurors are disqualified. Atlanta Coach Co. v. Cobb, 178 Ga. 544, 174 S.E. 131 (1934).

Court has discretion to determine impartiality. — Single purpose for voir dire is the ascertainment of the impartiality of jurors, the jurors' ability to treat the cause on the merits with objectivity, and freedom from bias and prior inclination; the control of the pursuit of such determination is within the sound legal discretion of the trial court, and only in the event of manifest abuse will the court's discretion be upset upon review. Legare v. State, 243 Ga. 744, 257 S.E.2d 247, cert. denied, 444 U.S. 984, 100 S. Ct. 491, 62 L. Ed. 2d 413 (1979).

Only statutory questions can be asked of jurors in first instance. — If the juror answers the statutory questions satisfactorily, and is pronounced prima facie competent, and the parties put the juror before the court as trier, aliunde evidence of the untruthfulness of the juror's answers must be offered. Herndon v. State, 178 Ga. 832, 174 S.E. 597 (1934), appeal dismissed, 295 U.S. 441, 55 S. Ct. 794, 79 L. Ed. 1530 (1935).

Court may reexamine juror. — Although a juror has been found competent and has been accepted, the trial court is authorized, before any evidence has been submitted on the main issue, to put the juror on trial again as to the juror's competency, if, subsequently to the juror's acceptance, there has been brought to the attention of the court any evidence attacking the juror's competency. Evans v. State, 37 Ga. App. 156, 139 S.E. 156 (1927).

Granting of a sequestered voir dire

is within the discretion of the court and the trial judge did not err in denying a request that a reopened voir dire as to a particular juror be conducted outside the presence of the other jurors. Rhodes v. State, 264 Ga. 123, 441 S.E.2d 748 (1994).

Defect of a petit juror propter defectum is ground for challenge reasonably made but is not ground for new trial after the verdict even if the defendant was ignorant of such defect until after trial. Mitchell v. State, 69 Ga. App. 771, 26 S.E.2d 663 (1943).

Defect propter affectum may be ground for new trial. — Defect propter affectum of a petit juror is a ground for challenge, and should be made before verdict if known to the defendant; yet, if unknown to the defendant and the defendant exercised due diligence, such a defect may be cause for grant of a new trial. Mitchell v. State, 69 Ga. App. 771, 26 S.E.2d 663 (1943).

Cited in Legare v. State, 243 Ga. 744, 257 S.E.2d 247 (1979); White v. State, 154 Ga. App. 527, 268 S.E.2d 790 (1980); Washington v. State, 253 Ga. 173, 318 S.E.2d 55 (1984); Aldridge v. State, 258 Ga. 75, 365 S.E.2d 111 (1988); Edmonds v. State, 196 Ga. App. 190, 395 S.E.2d 566 (1990); McConnell v. State, 263 Ga. App. 686, 589 S.E.2d 271 (2003).

RESEARCH REFERENCES

C.J.S. — 50A C.J.S., Juries, §§ 413 et seq., 477.

ALR. — Juror's voir dire denial or nondisclosure of acquaintance or relationship with attorney in case, or with partner or associate of such attorney, as ground for new trial or mistrial, 64 ALR3d 126.

Racial or ethnic prejudice of prospective jurors as proper subject of inquiry or ground of challenge on voir dire in state criminal case, 94 ALR3d 15.

15-12-168. Authority to call alternate jurors.

Whenever in the opinion of a judge of a superior court any felony trial is likely to be a protracted one, immediately after the jury has been impaneled and sworn the court shall direct the calling of one or more additional jurors to be known as "alternate jurors." (Ga. L. 1957, p. 466, § 1; Ga. L. 1968, p. 1225, § 1; Ga. L. 1976, p. 1043, § 1.)

RESEARCH REFERENCES

C.J.S. — 50A C.J.S., Juries, §§ 28, 254 et seq., 526 et seq.

ALR. — Constitutionality and construction of statute or court rule relating to alternate or additional jurors or substitution of jurors during trial, 84 ALR2d 1288; 15 ALR4th 1127; 88 ALR4th 711; 10 ALR Fed. 185; 115 ALR Fed. 381; 119 ALR Fed. 589.

Substitution, under Rule 24c of Federal Rules of Criminal Procedure, of alternate juror for regular juror before jury retires to consider verdict in federal criminal case, 115 ALR Fed. 381.

15-12-169. Manner of selecting alternate jurors.

Reserved. Repealed by Ga. L. 2011, p. 59, § 1-60/HB 415, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1957, p. 466, § 2; Ga. L. 1968, p. 1225, § 2; Ga. L. 2005, p. 20, § 8/HB 170; Ga. L. 2011, p. 59, § 1-60/HB 415, and was repealed on its own terms, effective July 1, 2012.

15-12-169.1. Choosing of alternate jurors; peremptory challenges.

On and after July 1, 2012, alternate jurors shall be chosen from the same county master jury list and in the same manner and have the same qualifications as the jurors already sworn. They shall be subject to the same examination and challenges. The number of alternate jurors shall be determined by the court. The state and the accused shall be entitled to as many peremptory challenges to alternate jurors as there are alternate jurors called. The peremptory challenges allowed to the state and to the accused in such event shall be in addition to the regular number of peremptory challenges allowed in criminal cases to the accused and to the state as provided by law. When two or more accused are tried jointly, the number and manner of exercising peremptory challenges shall be determined as provided in Code Section 17-8-4. (Code 1981, § 15-12-169.1, enacted by Ga. L. 2011, p. 59, § 1-61/HB 415.)

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For note, "Toward an Integrated Rule Prohibiting All Race-Based Peremptory Challenges: Some Considerations on Georgia v. McCollum," see 26 Ga. L. Rev. 503 (1992).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under Ga. L. 1968, p. 1225, § 2 and former O.C.G.A. § 15-12-169 are included in the annotations for this Code section.

Defense waived error, if any, in court's reduction in number of peremptory strikes by failure to object. Norris v. State, 250 Ga. 38, 295 S.E.2d 321 (1982) (decided under former O.C.G.A. § 15-12-169).

No error in using challenges prior to alternates' selection. — Although former O.C.G.A. § 15-12-169 anticipated that any additional challenges would be reserved until the alternates were selected, the failure to do so, absent objection, was not reversible error. Whittington v. State, 252 Ga. 168, 313 S.E.2d 73 (1984) (decided under former O.C.G.A. § 15-12-169).

Trial court's replacement of ill juror with alternate did not prejudice defendant's right to a fair trial and jury selection, even though ill juror had falsified the juror's physical ailments during voir dire. Norman v. State, 255 Ga. 313, 338 S.E.2d 249 (1986) (decided under former O.C.G.A. § 15-12-169).

Replacement of juror whom defense counsel previously represented. — Discharge of juror whom defense counsel had previously, albeit briefly, represented, and replacement with an alternate juror was not reversible error. Payne v. State, 195 Ga. App. 523, 394 S.E.2d 781 (1990) (decided under former O.C.G.A. § 15-12-169).

Replacement of tardy juror. — Two defendants' attorneys were not ineffective under Ga. Const. 1983, Art. I, Sec. I, Para. XIV and U.S. Const., amend. 6 for failing to object to the trial court's decision to replace a juror who was late to court with one of the alternate jurors who was fully qualified to sit on the jury under former O.C.G.A. § 15-12-169; the juror's tardiness was a sound basis for dismissal under O.C.G.A. § 15-12-172. Brooks v. State, 281 Ga. 14, 635 S.E.2d 723 (2006), cert.

denied, 549 U.S. 1215, 127 S. Ct. 1266, 167 L. Ed. 2d 91 (2007) (decided under former O.C.G.A. § 15-12-169).

Harmless error for court to insist on qualifying 60 prospective jurors instead of 54. — With regard to a defendant's conviction for malice murder and other crimes, while the trial court acknowledged that a panel of 54 jurors was required for selection of the jury and four alternates, the court's insistence on qualifying 60 prospective jurors was harmless error as any error regarding a juror qualified 55 or later on the panel was of no significance since it would have been impossible for those jurors to have been reached during the selection of either the jury or the alternate jurors, and the state and the defense were each allotted four additional peremptory challenges for the purpose of selecting four alternate jurors. O'Kelley v. State, 284 Ga. 758, 670 S.E.2d 388 (2008) (decided under former O.C.G.A. § 15-12-169).

Previous arrest warranted juror replacement. — Newly discovered evidence that a juror previously had been arrested supported the juror's removal and replacement with an alternate in a malice murder prosecution. Suits v. State, 270 Ga. 362, 507 S.E.2d 751 (1998) (decided under former O.C.G.A. § 15-12-169).

No harm to defendant in seating alternate juror. — Inasmuch as alternate jurors are selected in the same manner and must have the same qualifications as the impaneled jurors, there was no harm to the defendant in seating an alternate juror, particularly since the trial court specifically investigated the excused juror's inability to serve and that juror had stated that the juror had voluntarily voted for a guilty verdict. Cloud v. State, 235 Ga. App. 721, 510 S.E.2d 370 (1998) (decided under former O.C.G.A. § 15-12-169).

Cited in Alderman v. State, 241 Ga. 496, 246 S.E.2d 642 (decided under Ga. L. 1968, p. 1225, p. 2); Ruffin v. State, 242 Ga. 95, 252 S.E.2d 472 (1979) (decided under Ga. L. 1968, p. 1225, p. 2); Curry v. State, 255 Ga. 215, 336 S.E.2d 762 (1985) (decided under former O.C.G.A. § 15-12-169); Aldridge v. State, 258 Ga. 75, 365 S.E.2d 111 (1988) (decided under former O.C.G.A. § 15-12-169); Berry v. State, 267 Ga. 476, 480 S.E.2d 32 (1997) (decided under former O.C.G.A. § 15-12-169).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 15-12-169 are included in the annotations for this Code section.

Unused peremptory challenges may not be used as to alternate jurors. — In selecting alternate jurors under former O.C.G.A. § 15-12-169, the parties were not entitled to utilize unused O.C.G.A. § 15-12-165 peremptory challenges as additional peremptory challenges to the alternate jurors. 1993 Op. Att'y Gen. No. U93-3 (decided under former O.C.G.A. § 15-12-169).

15-12-170. Oath and duties of alternate jurors; expense allowance.

Alternate jurors shall take the same oath as the jurors already selected. They shall be seated near the jury, with equal opportunity for seeing and hearing the proceedings, and shall attend at all times upon the trial with the jury. They shall obey all orders and admonitions of the court to the jury. When the regular jurors are ordered kept together in any case, the alternate jurors shall also be kept in confinement with the regular jurors. Alternate jurors shall receive the same expense allow-

ance as do the regular jurors. (Ga. L. 1957, p. 466, § 3; Ga. L. 1968, p. 1225, § 3; Ga. L. 1974, p. 325, § 6.)

RESEARCH REFERENCES

ALR. — Plea of former jeopardy where jury is discharged because of illness or insanity of juror, 125 ALR 694.

15-12-171. Discharge or separate custody of alternate jurors upon submission of verdict.

Upon final submission of the case to the jury, the alternate jurors shall not retire with the jury of 12 for deliberation but may be discharged. However, if the court deems it advisable, it may direct that one or more of the alternate jurors be kept in the custody of the sheriff or one or more court officers, separate and apart from the regular jurors, until the jury has agreed upon a verdict. (Ga. L. 1957, p. 466, § 4; Ga. L. 1968, p. 1225, § 4.)

JUDICIAL DECISIONS

It is error to allow alternate juror to retire with other jurors for deliberations over defense counsel's objections. Bullock v. State, 150 Ga. App. 824, 258 S.E.2d 610 (1979).

Presence of alternate juror harmless. — Presence of alternate juror in jury room during deliberations was harmless error since the alternate juror did not influence any juror, or the verdict of the entire jury. State v. Newsome, 259 Ga. 187, 378 S.E.2d 125 (1989).

Objection to presence of alternate waived. — In a prosecution for kidnapping with bodily injury and aggravated assault in which an alternate juror had been present in the jury room during deliberations, contrary to O.C.G.A. § 15-12-171, but no verdict had been reached and the alternate had been removed, the defendant's agreement to allow jury deliberations to proceed waived any claim of error. Nelson v. State, 278 Ga. App. 548, 629 S.E.2d 410 (2006).

Replacement of regular juror with alternate harmless error. — Replacement of a regular juror with an alternate juror during jury deliberations, due to an innocent error by the jurors as to who was the regular juror and who was the alternate, was harmless error since the correct number of jurors deliberated, and the extra juror had no influence upon the jury's decision. Ballentine v. State, 194 Ga. App. 560, 390 S.E.2d 887 (1990).

Death penalty jurors not excused following guilty verdict. — There is no requirement that alternate jurors in a death penalty case be excused once the jury has rendered a verdict as to guilt, and no need to keep the jurors separate when the jury is not deliberating. Lonchar v. State, 258 Ga. 447, 369 S.E.2d 749 (1988), cert. denied, 488 U.S. 1019, 109 S. Ct. 818, 102 L. Ed. 2d 808 (1989).

Waiver to alternate's participation. — Defense counsel's consent to the trial court's proposal that an alternate juror witness jury deliberations so that the alternate would be privy to the discussion in case a juror had to be excused, thereby avoiding the need to start deliberations anew with the alternate, waived any error that resulted. London v. State, 260 Ga. App. 780, 580 S.E.2d 686 (2003).

Trial court did not err in allowing an alternate juror to be present during, but not participate in, jury deliberations because in cases when defense counsel agreed to the alternate juror's presence

during deliberations any error was waived. Chandler v. State, 309 Ga. App. 611, 710 S.E.2d 826 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 129.

15-12-172. Replacement of incapacitated jurors; effect of replacement.

If at any time, whether before or after final submission of the case to the jury, a juror dies, becomes ill, upon other good cause shown to the court is found to be unable to perform his duty, or is discharged for other legal cause, the first alternate juror shall take the place of the first juror becoming incapacitated. Further replacements shall be made in similar numerical sequence provided the alternate jurors have not been discharged. An alternate juror taking the place of any incapacitated juror shall thereafter be deemed to be a member of the jury of 12 and shall have full power to take part in the deliberations of the jury and the finding of the verdict. Any verdict found by any jury having thereon alternate jurors shall have the same force, effect, and validity as if found by the original jury of 12. (Ga. L. 1957, p. 466, § 5; Ga. L. 1968, p. 1225, § 5.)

JUDICIAL DECISIONS

Analysis

General Consideration
Panel of Jurors
Reasons for Replacement

General Consideration

Authority to excuse juror from panel. — O.C.G.A. § 15-12-172 implicitly authorizes the trial court to exercise the court's discretion with regard to excusing a juror from the panel. Baptiste v. State, 190 Ga. App. 451, 379 S.E.2d 165 (1989); Remine v. State, 203 Ga. App. 30, 416 S.E.2d 326, cert. denied, 203 Ga. App. 907, 416 S.E.2d 326 (1992); Pinkins v. State, 243 Ga. App. 737, 534 S.E.2d 192 (2000).

Trial court was given discretion to remove a juror and replace that juror with an alternate; there was no abuse of discretion if the juror's failure to respond truthfully during voir dire and the juror's actions during jury deliberations constituted legal cause for removal. Wooten v. State, 250 Ga. App. 686, 552 S.E.2d 878 (2001), cert. denied, 537 U.S. 819, 123 S. Ct. 96, 154 L. Ed. 2d 26 (2002).

Juror's refusal to decide the case on the evidence under the law as charged by the court provided legal cause for that juror's removal; when problems stemming from the juror's refusal seemed to be continuing and hindering the jury's deliberations, the trial court was well within the court's province to bring out said juror to determine whether the juror's removal would be legally necessary. Mayfield v. State, 276 Ga. 324, 578 S.E.2d 438 (2003).

Since the trial court concluded under the totality of the circumstances that a juror's testimony that out-of-court communication did not affect the juror was

not credible, this ruling had a sound basis in that the ruling served the legally relevant purpose of preserving public respect for the integrity of the judicial process, and it followed that the trial court properly exercised the court's broad discretion in excusing the juror. Murray v. State, 276 Ga. 396, 578 S.E.2d 853 (2003).

Pursuant to O.C.G.A. § 15-12-172, the trial judge was authorized in the exercise of the court's discretion to replace a juror with an alternate when the judge was convinced that the removed juror's ability to perform the duties of a juror was impaired. Payne v. State, 290 Ga. App. 589, 660 S.E.2d 405 (2008).

Habeas court did not err in rejecting the inmate's claim of ineffective assistance of counsel, based on trial counsel's failure to object to the trial court's excusing of a juror who could not make of the juror's mind, because, even if counsel objected, the trial judge still had the discretion to remove the juror and replace the juror with an alternate based on the judge's finding that the juror could not fulfill the juror's duties. Compton v. Jackson, 295 Ga. 777, 764 S.E.2d 142 (2014).

Replacement of juror before commencement of trial. — Defendant's conviction was affirmed because the defendant waived any objection to the trial court's replacement of absent jurors with the alternates when the trial counsel did not object on the day of trial and stated that counsel was ready to proceed; furthermore, the trial court acted within the court's discretion in replacing the jurors pursuant to O.C.G.A. § 15-12-172, and the defendant was not prejudiced by the trial court's actions because the trial had not yet begun. Scott v. State, 272 Ga. App. 32, 611 S.E.2d 712 (2005).

Improper conduct on the part of a juror is not required for the court to dismiss the juror and replace the juror with an alternate. Darden v. State, 212 Ga. App. 345, 441 S.E.2d 816 (1994).

Court may recall alternate juror after jury retires. — Trial court did not err by recalling an alternate juror to replace a disqualified juror after the jury had retired to deliberate and the alternate had gone home. Perry v. State, 255 Ga. 490, 339 S.E.2d 922 (1986), overruled on other grounds, Character v. State, 285 Ga. 112, 674 S.E.2d 280 (2009).

Replacement after commencement of trial. — Because a juror did not become aware of the grounds for disqualification until after the trial had commenced and the juror acknowledged that because of an acquaintance with the members of defendant's family it would be difficult for the juror to return a guilty verdict, the trial court did not err in replacing the juror with an alternate. Reynolds v. State, 271 Ga. 174, 517 S.E.2d 51 (1999).

Trial court's removal of a juror who realized after the trial began that the victim was known by the juror was not error since the juror repeatedly stated an inability to fairly decide the case which supported the court's finding of bias, particularly since the juror began to equivocate only after continued questioning. Ganas v. State, 245 Ga. App. 645, 537 S.E.2d 758 (2000).

Trial court did not err under O.C.G.A. § 15-12-172 by removing a juror during the criminal trial, when, during the trial, the trial court learned for the first time that the juror knew the defendant from the night club they both attended and the defendant did not claim that the alternate was not qualified to serve. Clark v. State, 282 Ga. App. 248, 638 S.E.2d 397 (2006).

With regard to defendant's trial for rape, the trial court did not abuse the court's discretion by replacing a juror with an alternate as a result of the juror having fallen asleep during the proceeding and indicating that additional material to keep the juror apprised of what was missed would be necessary due to the juror's sleeping problem. Freeman v. State, 291 Ga. App. 651, 662 S.E.2d 750 (2008).

Trial judge's personal examination of juror was sufficient since the juror was excused before the jury was sworn; the judge was not under an obligation to consult with a doctor to confirm the need for excusal. Hill v. State, 263 Ga. 37, 427 S.E.2d 770, reh'g denied, 510 U.S. 1066, 114 S. Ct. 745, 126 L. Ed. 2d 708(1994); habeas corpus proceeding, remanded, Turpin v. Hill, 269 Ga. 302, 498 S.E.2d 52 (1998), cert. denied, 510 U.S. 950, 114 S. Ct. 396, 126 L. Ed. 2d 344 (1993).

General Consideration (Cont'd)

Cited in Tanner v. State, 242 Ga. 437, 249 S.E.2d 238 (1978); Neal v. State, 160 Ga. App. 834, 288 S.E.2d 241 (1982); Graham v. State, 171 Ga. App. 242, 319 S.E.2d 484 (1984); Simmons v. State, 251 Ga. App. 682, 555 S.E.2d 59 (2001); McConnell v. State, 263 Ga. App. 686, 589 S.E.2d 271 (2003); Inman v. State, 281 Ga. 67, 635 S.E.2d 125 (2006); Jones v. State, 282 Ga. 47, 644 S.E.2d 853 (2007); Rivera v. State, 282 Ga. 355, 647 S.E.2d 70 (2007); Freeman v. State, 291 Ga. App. 651, 662 S.E.2d 750 (2008).

Panel of Jurors

No error if defendant moved to proceed with eleven jurors. — Appellant's enumeration of error alleging juror misconduct is not valid if a juror was excused for illness and the appellant moved to allow the jury to continue the jury's deliberations with eleven members. Hack v. State, 168 Ga. App. 927, 311 S.E.2d 211 (1983).

Full panel of qualified jurors chosen by defendant. — Since the case proceeded to trial before a full panel of qualified jurors of the defendant's own choosing, the defendant was not harmed by the court's decision to excuse two jurors on grounds of hardship. Remine v. State, 203 Ga. App. 30, 416 S.E.2d 326, cert. denied, 203 Ga. App. 907, 416 S.E.2d 326 (1992).

Availability of unused peremptory strikes after jury selected. — After the trial court refused to strike the first alternate juror for cause and the defendant argued that the defendant was unduly prejudiced when the jury had already been selected, as defendant was deprived of the right to exercise a peremptory strike, which would in the ordinary selection process have been available to defendant when a challenge for cause was refused, it was held that there is no binding or persuasive authority for the proposition that unused peremptory strikes should be available under these circumstances after the jury has been selected and sworn. McDaniel v. State, 257 Ga. 345, 359 S.E.2d 642 (1987).

Reasons for Replacement

Improper excusal of lone juror holding out for acquittal. — Trial judge's failure to make a reliable determination of whether, in the final moments of jury deliberations, the lone juror to reserve a reasonable doubt as to the defendant's guilt, who was reported by the jury foreman to be "extremely nervous," was actually incapacitated, the judge's failure to ensure that the juror understood the right to adhere to the juror's view that the defendant should be acquitted, and the judge's failure, upon excusing that juror and replacing the juror with an alternate juror, to instruct the reconstituted jury to begin anew deprived the defendant of defendant's constitutional right to a trial by a fair and impartial jury and deprived the defendant of defendant's due process right to a fair trial. Peek v. Kemp, 746 F.2d 672 (11th Cir. 1984), cert. denied, 479 U.S. 939, 107 S. Ct. 421, 93 L. Ed. 2d 371 (1986).

Fact that a juror reached a conclusion different from that of the other jurors did not render the juror incapacitated and, therefore, the trial court erred in replacing a lone juror voting in favor of defendant with an alternate juror. Mason v. State, 244 Ga. App. 247, 535 S.E.2d 497 (2000).

Trial court abused the court's discretion by replacing a holdout juror in a rape trial without further investigation because, even though the foreman stated that the holdout juror would not look at all of the evidence, the juror stated that the juror had considered all of the evidence and did not believe that the defendant was guilty. Semega v. State, 302 Ga. App. 879, 691 S.E.2d 923 (2010).

Replacement of jurors prejudicial. — If two jurors could not or would not make a decision because the jurors felt that there was not enough evidence, there was no showing that the jurors were in any way incapacitated or unable to fulfill their duties and no other legal cause was shown, and the court made no attempt to inquire into the jurors' reasons for not voting, replacement of the two jurors with alternate jurors was in error and prejudicial to the defendant. Stokes v. State, 204 Ga. App. 141, 418 S.E.2d 419 (1992).

Trial court's replacement of ill juror with alternate did not prejudice defendant's right to a fair trial and jury selection, even though the ill juror had falsified the juror's physical ailments during voir dire. Norman v. State, 255 Ga. 313, 338 S.E.2d 249 (1986).

Although the erroneous replacement of a juror may under some circumstances deprive a defendant of the right to have defendant's trial completed by a particular tribunal, defendant's Sixth Amendment right to a fair, impartial, and representative jury, and defendant's due process rights grounded in the entitlement to procedures mandated by state law, the defendant was not denied any such rights as a result of the replacement of a juror who, the record showed, was too ill to continue in the deliberations. Peek v. Kemp, 784 F.2d 1479 (11th Cir. 1986), cert. denied, 479 U.S. 939, 107 S. Ct. 421, 93 L. Ed. 2d 371 (1987).

Because a juror had a scheduled surgery and obvious apprehension about the juror's medical condition, the court did not err in replacing the juror with an alternate. Cleveland v. State, 218 Ga. App. 661, 463 S.E.2d 36 (1995).

Trial court committed reversible error when the court replaced a juror who was reported to be ill without consulting the defendant. Scott v. State, 219 Ga. App. 798, 466 S.E.2d 678 (1996).

Trial court did not abuse the court's discretion by dismissing a juror and replacing the juror with an alternate after "significant deliberations" had occurred because the trial court conducted an independent investigation into the juror's illness, discovering that the juror was in the hospital and had the flu, and developed some factual support for the court's decision to remove the juror for legally relevant reasons. Bryant v. State, 320 Ga. App. 504, 740 S.E.2d 247 (2013).

Sleeping juror. — Trial court properly denied a defendant's motion to replace a juror who was dozing. When it appeared that the juror had dozed off, the trial court addressed that juror individually and initiated changes to accommodate the juror's efforts to stay alert, and there was no indication that the single confirmed act of dozing was anything other than momentary. Smith v. State, 284 Ga. 17, 663 S.E.2d 142 (2008).

Trial court did not abuse the court's discretion in refusing to discharge and replace a juror who fell asleep for only about 30 seconds between direct and cross-examination of a witness because the chairs were comfortable, and the juror assured the trial court that it would not happen again. Kollie v. State, 301 Ga. App. 534, 687 S.E.2d 869 (2009).

Trial court abused the court's discretion under O.C.G.A. § 15-12-172 in dismissing a juror because there was nothing in the trial transcript to show that at any time prior to announcing that the court had dismissed the juror, the trial judge made any statements in open court or in the defendant's presence or otherwise indicated that the trial judge had personally observed the juror sleeping during the trial; the record also did not show that when the trial judge believed that the juror was actually sleeping the trial judge took any steps to wake the juror or that the trial judge questioned the juror in the presence of the defendant and defense counsel before dismissing the juror. Dunn v. State, 308 Ga. App. 103, 706 S.E.2d 596 (2011).

Trial court did not abuse the court's discretion in removing a juror after concluding that the juror slept through the presentation portions of the evidence because the trial court conducted an investigation into the juror's inability to perform the required duties, and the court developed a factual basis for the court's decision to remove the juror for a legally relevant purpose; because the juror's incapacity was obvious to both parties, no additional inquiry by the trial court was required. Gibson v. State, 290 Ga. 6, 717 S.E.2d 447 (2011).

There was no abuse of discretion by the trial court in concluding the court's immediate remedial action, instituting a "buddy system" between jurors to have the jurors help each other stay awake, were sufficient after a juror was allegedly sleeping, and trial counsel was not ineffective for failing to request further inquiry after there were no further incidents. Mathis v. State, 293 Ga. 837, 750 S.E.2d 308 (2013).

Trial court did not abuse its discretion

Reasons for Replacement (Cont'd)

in failing to replace a sleeping juror as the incident was brief and the court took prompt action by reminding jurors of the importance of staying awake and instructing the jurors to assist each other. Armstrong v. State, 325 Ga. App. 33, 752 S.E.2d 120 (2013).

Replacement of juror who could not appear on time because of vehicular mechanical difficulties was not an abuse of discretion. Herring v. State, 224 Ga. App. 809, 481 S.E.2d 842 (1997).

Dismissing juror for body odor. — Trial court abused the court's discretion under O.C.G.A. § 15-12-172 in dismissing a juror because even though the trial judge was lacking in any personal knowledge of the juror's alleged bodily odor problem, the trial judge relied upon information obtained outside the defendant's presence from unidentified sources of untested reliability in concluding that a problem existed; upon reaching that conclusion, the trial judge failed to make any effort to solve the problem in order to avoid dismissing the juror. Dunn v. State, 308 Ga. App. 103, 706 S.E.2d 596 (2011).

Replacement of juror whom defense counsel previously represented. — Discharge of juror whom defense counsel had previously, albeit briefly, represented, and replacement with an alternate juror was not reversible error. Payne v. State, 195 Ga. App. 523, 394 S.E.2d 781 (1990).

Out-of-court contact between juror and defense counsel. — Replacing a juror with an alternate juror after an out-of-court contact between the juror and defense counsel did not violate a murder defendant's constitutional rights to due process and trial by an impartial jury since the trial court had a sound basis for exercising the court's discretion to discharge the juror. Miller v. State, 261 Ga. 679, 410 S.E.2d 101 (1991).

Replacement of juror who was contacted by another person during an overnight break was not an abuse of discretion. Gurr v. State, 238 Ga. App. 1, 516 S.E.2d 553 (1999).

Replacement of juror who was acquainted with defendants was within the discretion of the trial court. Darden v. State, 212 Ga. App. 345, 441 S.E.2d 816 (1994).

Trial court did not abuse the court's discretion by excusing a juror from service and placing an alternate juror on the jury with regard to a defendant's trial for malice murder, kidnapping with bodily injury, and concealing the death of another since after the jury began deliberating the juror informed the jury foreman that the juror had prepared a tax return for a sibling of the defendant and had realized the conflict only after seeing the sibling in the courtroom during the trial. The trial court was authorized to find that, at the very least, the juror did not promptly inform the trial court when it became clear that the juror's voir dire representation that the juror did not know any of the defendant's relatives was incorrect. Carr v. State, 282 Ga. 698, 653 S.E.2d 472 (2007).

Detention officer stated ability to be fair. — Detention officer/juror stated that the officer's prior encounters with the defendant did not result in the officer's formation of an opinion about the case and did not affect the officer's ability to be fair and impartial based on the evidence presented at trial. The trial court did not abuse the court's discretion in retaining the juror. Prince v. State, 277 Ga. 230, 587 S.E.2d 637 (2003).

Religious beliefs justified replacement after trial commenced. — Trial court did not abuse the court's discretion in dismissing a juror after the submission of the case to the jury since, after proper examination by the court and the parties, the juror stated that the juror could not deliberate because the juror's religious beliefs prevented the juror from judging another person. Williams v. State, 272 Ga. 828, 537 S.E.2d 39 (2000).

Juror who was observed standing with and engaged in conversation with defendant was properly dismissed. Worthy v. State, 223 Ga. App. 612, 478 S.E.2d 421 (1996).

Statement of ability to lay aside negative opinion of defense. — If the first alternate juror, when called, expressed reservations about sitting on the jury both because the juror had something else to do and "because I feel that the way

that the jury appeared to be selected seems unfair or lopsided and therefore I might be biased against the defense," but the juror unequivocally stated that the juror could consider the evidence presented and the law as charged by the court and lay aside the juror's opinion of the defense lawyer in determining the outcome of the case, and no evidence was produced to show that this juror was incapable of rendering an impartial verdict, the trial court did not abuse the court's discretion in refusing to excuse the juror for cause. McDaniel v. State, 257 Ga. 345, 359 S.E.2d 642 (1987).

Juror's failure to decide case solely on evidence as grounds for removal. — Trial judge did not abuse the judge's discretion in concluding that the failure of a juror to adhere to the judge's instructions to decide the case solely on the basis of the evidence introduced at trial, combined with the juror's subsequent conduct in attempting to influence the other jurors to do likewise, constituted "legal cause" for the judge's removal. McGuire v. State, 200 Ga. App. 509, 408 S.E.2d 506 (1991).

Argument that juror's discussion of case with employer was cause for removal not preserved for review. — Murder defendant failed to preserve the argument that a juror should have been removed for talking about the case with the juror's employer under O.C.G.A. § 15-12-172 because defendant did not request the juror's removal or any other remedial action at the time of the incident. Ensley v. State, 294 Ga. 200, 751 S.E.2d 396 (2013).

Since the trial court asked a juror why the juror could not serve and took the juror at the juror's word, accepting that the juror was upset about the juror's inability to judge the defendant, it was not an abuse of discretion to replace that juror with an alternate on the basis of an informed finding of incapacity. Cloud v. State, 235 Ga. App. 721, 510 S.E.2d 370 (1998).

Juror's inability to get along with other jurors. — Trial court properly removed a juror after the juror made it clear that the juror would not participate in any discussions with fellow jurors and kept repeating that the juror wanted "off" the jury; the juror never stated that the juror believed the defendants were innocent, but rather described problems dealing with the fellow jurors and participating in deliberations. Alford v. State, 243 Ga. App. 212, 534 S.E.2d 81 (2000).

Legal cause for removal found. — Juror's failure to respond truthfully during voir dire, coupled with actions during deliberations showing bias, constituted legal cause for removal. Norris v. State, 230 Ga. App. 492, 496 S.E.2d 781 (1998).

Trial court did not err in excusing a juror from the jury panel, even though the juror appeared to be the lone holdout for acquittal of the defendant being tried on drug charges as the totality of the circumstances suggested that the juror was involved with an alternate juror and other people in an ongoing attempt to subvert the jury, and, thus, the trial court's action in removing the juror was not an abuse of discretion. Thompson v. State, 260 Ga. App. 253, 581 S.E.2d 596 (2003).

Foreman's array of disruptive behavior, which went beyond the mere use of curse words, provided a sound legal basis for the foreman's removal pursuant to O.C.G.A. § 15-12-172; the foreman criticized the impartiality of the trial court, told the other jurors to "go to hell," and actively humiliated the fellow jurors through the use of vindictive personal attacks wholly unrelated to the issues being considered by the jury. State v. Arnold, 280 Ga. 487, 629 S.E.2d 807 (2006).

Trial court properly dismissed a juror during deliberations under O.C.G.A. § 15-12-172. The juror's failure to respond truthfully during voir dire when asked whether the juror had been arrested for a felony constituted legal cause to remove the juror as the trial court was faced with a juror whose veracity was clearly in question. Green v. State, 298 Ga. App. 301, 680 S.E.2d 156 (2009).

Trial court, after conducting a proper and thorough inquiry, had ample factual and legal support for the court's decision to remove a juror and thus did not abuse the court's discretion. The court found that: (1) the juror knew more of the prosecution's witnesses than the juror conveyed during voir dire; (2) the juror repeatedly referred to other jurors of the

Reasons for Replacement (Cont'd)

juror's knowledge of the defendants' and the victim's families; (3) the person whom the juror was dating associated with many people involved in the case; (4) the juror indicated that the juror felt that the juror was in a difficult position by having to make a decision whether to find the defendants guilty and then return to the juror's community; and (5) the juror made extra-judicial comments, such as referring to one of the witnesses as a drug dealer, although no evidence of this claim was presented. Moon v. State, 288 Ga. 508, 705 S.E.2d 649 (2011).

It was proper to remove a juror because the trial court did not abuse the court's discretion in concluding that the opinion of a juror, combined with the juror's violation of the trial court's instructions by attempting to influence other jurors with that opinion prior to deliberations, constituted "legal cause" for the juror's removal; the fact that the juror eventually stated that the juror could be impartial did not require the trial court to ignore the numerous times the juror equivocated or the other jurors' testimony showing that the juror expressed a fixed and definite opinion and did not make the trial court's credibility decision to strike the juror error. Butler v. State, 290 Ga. 412, 721 S.E.2d 876 (2012).

Replacement of juror held proper. — In a rape and sexual molestation trial, the trial court did not abuse the court's discretion in removing a juror for cause under O.C.G.A. § 15-12-172 as her husband had been arrested for sexual molestation in the same county, and she worried about the impact her vote on a verdict might have on her husband's case. Weathersby v. State, 263 Ga. App. 341, 587 S.E.2d 836 (2003).

Trial court did not err in replacing a juror who stated that the juror's daughter and niece were acquainted with both the murder victim and the defendant, and that the juror's niece and the victim "actually had more than like a friendly relationship," that, although the juror had not received any specific threats, the juror felt pressure to find the defendant not guilty "out of fear," and stated that the juror's feelings would prevent the juror from being fair and impartial in deliberating on the case. Cummings v. State, 280 Ga. 831, 632 S.E.2d 152 (2006).

Two defendants' attorneys were not ineffective under Ga. Const. 1983, Art. I, Sec. I. Para. XIV and U.S. Const., amend. 6 for failing to object to the trial court's decision to replace a juror who was late to court with one of the alternate jurors who was fully qualified to sit on the jury under O.C.G.A. § 15-12-169; the juror's tardiness was a sound basis for dismissal under O.C.G.A. § 15-12-172. Brooks v. State, 281 Ga. 14, 635 S.E.2d 723 (2006), cert. denied, 549 U.S. 1215, 127 S. Ct. 1266, 167 L. Ed. 2d 91 (2007).

Trial counsel was not ineffective for failing to object to a juror's release pursuant to O.C.G.A. § 15-12-172 because the trial judge exercised informed and sound discretion to remove the juror and seat an alternate after receiving reliable information that the juror's child was suffering from a medical condition that required an emergency admission to the hospital. Taylor v. State, 285 Ga. App. 697, 647 S.E.2d 381 (2007), cert. denied, 2007 Ga. LEXIS 655 (Ga. 2007).

Defendant's convictions for armed robbery and aggravated assault were proper because the dismissal of juror two and the replacement of that juror with an alternate juror was an adequate remedy authorized by O.C.G.A. § 15-12-172 and did not deprive the defendant of a fair trial. Tolbert v. State, 300 Ga. App. 51, 684 S.E.2d 120 (2009), cert. denied, No. S10C0168, 2010 Ga. LEXIS 196 (Ga. 2010).

Discharge of a juror during a defendant's trial served the legally relevant purpose of preserving public respect for the integrity of the judicial process after counsel and the judge suspected that the juror had acted deliberately in approaching a member of the victim's family so that the juror would be excused from the trial, and since the juror disobeyed the trial court's instructions and was tardy to court. White v. State, 287 Ga. 713, 699 S.E.2d 291 (2010).

Trial court did not abuse the court's discretion under O.C.G.A. § 15-12-172 by removing a juror and replacing the juror

with an alternate juror during jury deliberations because communications between the juror and the bailiff regarding the juror's opinion on the defendant's guilt on vehicular homicide charges may have improperly influenced the juror's consideration of the case. Brown v. State, 310 Ga. App. 285, 712 S.E.2d 521 (2011).

Trial court did not err in dismissing a juror and seating an alternate in place of the juror because it was not an abuse of discretion to remove a juror who failed during voir dire to provide accurate information that the state had a legitimate right to know. Johnson v. State, 289 Ga. 498, 713 S.E.2d 376 (2011).

Trial court was within the court's discretion to excuse a juror based on the totality of the circumstances because the trial court believed that the juror's acquaintance with a witness and with the school where the defendant, various witnesses, and the juror's son had attended classes, made the juror very uncomfortable and would affect the juror's ability to deliberate. Pate v. State, 315 Ga. App. 205, 726 S.E.2d 691 (2012), cert. denied, No. S12C1308, 2012 Ga. LEXIS 1027 (Ga. 2012).

Trial court's decision to proceed with 11 jurors and an alternate after it was discovered that only 11 jurors and the alternate had been in the jury box during the oath and instructions, instead of the 12 jurors that were selected, was not improper; replacing the missing juror had no more effect of denying the defendant a qualified jury than if the juror had become ill or died. Crowley v. State, 315 Ga. App. 755, 728 S.E.2d 282 (2012).

Replacing the juror who committed misconduct by sharing with a state's witness the juror's thoughts on the case and then individually polling the remaining jurors to ascertain that the jurors could remain fair and impartial was an adequate remedy and did not deprive the defendant of a fair trial. Sallee v. State, 329 Ga. App. 612, 765 S.E.2d 758 (2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, § 129.

C.J.S. — 50A C.J.S., Juries, § 114.

ALR. — Substitution of juror after completion of panel as sustaining plea of former jeopardy, 33 ALR 142.

Misconduct of juror which will authorize or require withdrawal of juror, 86 ALR 928.

Plea of former jeopardy where jury is discharged because of illness or insanity of juror, 125 ALR 694.

Constitutionality and construction of statute or court rule relating to alternate or additional jurors or substitution of jurors during trial, 84 ALR2d 1288; 15 ALR4th 1127; 88 ALR4th 711; 10 ALR Fed. 185; 115 ALR Fed. 381; 119 ALR Fed. 589.

Inattention of juror from sleepiness or other cause as ground for reversal or new trial, 88 ALR2d 1275; 59 ALR5th 1.

Substitution, under Rule 24c of Federal Rules of Criminal Procedure, of alternate juror for regular juror before jury retires to consider verdict in federal criminal case, 115 ALR Fed. 381.

CHAPTER 13

OFFICERS OF COURT GENERALLY

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Liability for Official Acts

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JUDICIAL DECISIONS

Cited in In re Irvin, 171 Ga. App. 794, 321 S.E.2d 119 (1984).

ARTICLE 1

LIABILITY FOR OFFICIAL ACTS

15-13-1. Officers of court liability.

All sheriffs, deputy sheriffs, coroners, jailers, constables, and other officers of court shall be liable to all actions and disabilities which they incur in respect of any matter or thing relating to or concerning their respective offices. (Laws 1792, Cobb's 1851 Digest, p. 576; Code 1863, § 3852; Code 1868, § 3872; Code 1873, § 3948; Code 1882, § 3948; Civil Code 1895, § 4769; Civil Code 1910, § 5341; Code 1933, § 24-201.)

Cross references. — Status of court-appointed receivers as officers of court, § 9-8-8.

JUDICIAL DECISIONS

Sheriff liable for official acts only of deputy. — Deputy sheriff is not an employee of the sheriff, but rather of the county wherein the deputy serves, and is merely appointed by the sheriff, who is liable for the official acts (that is, acts virtute officii or colore officii) only of the deputy. Gay v. Healan, 88 Ga. App. 533, 77 S.E.2d 47 (1953); Johnson v. United States Fid. & Guar. Co., 93 Ga. App. 336, 91 S.E.2d 779 (1956); Chadwick v. Stewart, 94 Ga. App. 329, 94 S.E.2d 502 (1956).

Sheriff is not personally liable for deputy's negligent acts which acts are in no way connected with the performance of the deputy's official duties. Gay v. Healan, 88 Ga. App. 533, 77 S.E.2d 47 (1953); Johnson v. United States Fid. & Guar. Co., 93 Ga. App. 336, 91 S.E.2d 779 (1956).

Acts of deputy sheriff de facto as legal as actual deputy's. — If one acts as a deputy sheriff with the consent, approval, and acquiescence of the sheriff, who holds the deputy out to the public as the sheriff's deputy, the deputy's acts as such deputy, although the deputy was not appointed in writing as required by law and did not take the oath of office required of a deputy sheriff and did not otherwise legally qualify as a deputy sheriff, are acts of a deputy sheriff de facto and possess the same legality as the acts of a legally appointed deputy sheriff who is an officer de jure, and this is true although such deputy violates a penal statute. Powell v. Fidelity & Deposit Co., 45 Ga. App. 88, 163 S.E. 239 (1932).

Sheriff liable for prisoner's escape if knew escape possible. — If it appeared that sheriff allowed prisoner to go at large within prison, knowing that there was a breach in the walls through which the prisoner might escape, the sheriff is liable for such escape in attachment. Craig v. Maltbie, 1 Ga. 544 (1846).

Constable cannot defend escape by showing that defendant was rescued by a mob. Abbott v. Holland, 20 Ga. 598 (1856).

Officer not liable for levying execution issued on void judgment. — Levying officer is not bound to inquire into the validity of the proceedings on which the execution is based; if the process is from a court of competent jurisdiction, issued by the proper officer, regular on its face, and the officer has no notice, from the writ or papers attached thereto, of defects in the proceedings, or that the execution has been superseded, the officer is not liable for damages in levying the execution, even though the judgment on which the execution issued is void. Wilbur v. Stokes, 117 Ga. 545, 43 S.E. 856 (1903).

Officer entrusted is liable to that person. — Officer entrusted by law with possession of personal property is liable to the owner of that property for negligence in the performance of the officer's trust or duty, or for fraud or neglect in the execution of the office. Westberry v. Hand, 19 Ga. App. 529, 91 S.E. 930 (1917).

Officer accepting cash bond acts as trustee for depositor. — There is no authority of law for sheriff or arresting officer to accept a cash bond or a deposit of money in lieu of bail from one charged with a criminal offense against the laws of this state; and, when an arresting officer requires or accepts a cash bond or a deposit of money in lieu of bail, the money remains the property of the person depositing the money with such officer, and the officer holds the money in trust for the depositor. Washburn v. Foster, 87 Ga. App. 132, 73 S.E.2d 240 (1952).

Sheriff requiring additional cash bond acts as trustee for depositor. — If a person is charged with a misdemeanor the person is entitled as a matter of law to furnish bail in a reasonable amount with the sureties on the bond to be approved by a sheriff of this state, and there is no provision whereby a sheriff can require such sureties to deposit with the sheriff a cash bond or a deposit of money in addition to the bail required by law before the sheriff will accept the bail tendered the

sheriff; if this is done, the money so deposited remains the property of the person depositing the money, and the sheriff holds the money as trustee for the depositor. Washburn v. Foster, 87 Ga. App. 132, 73 S.E.2d 240 (1952).

Sheriff illegally requiring cash bond is liable on official bond. — Act of sheriff in illegally requiring and accepting a cash bond or a sum of money in lieu of or in addition to bail from a surety for one charged with an offense against the laws of this state is an act done colore officii and renders the sheriff and the sheriff's sureties liable on the sheriff's official bond to anyone aggrieved. Washburn v. Foster, 87 Ga. App. 132, 73 S.E.2d 240 (1952).

Officer personally liable if prisoner injured during transportation. — If a deputy was transporting a prisoner who was injured due to the allegedly negligent acts of the deputy, clearly done colore officii, the petition set forth a cause of action against the deputy, and likewise against the sheriff who directed the deputy to transport the prisoner. Chadwick v. Stewart, 94 Ga. App. 329, 94 S.E.2d 502 (1956).

City court clerk liable for failure to account for money. — When act creating city court makes the clerk thereof amenable to all the duties and liabilities attached to the office of clerk of the superior court, the clerk may be ruled against under former Code 1933, § 24-2722 (see now O.C.G.A. § 15-6-83) upon the clerk's failure to account faithfully for money coming into the clerk's hands, and also under former Code 1933, §§ 24-206 and 24-207 (see now O.C.G.A. § 15-13-3). Ivester v. Mozeley, 89 Ga. App. 578, 80 S.E.2d 197 (1954).

Liability of tax commissioner. — Tax commissioner, who was an ex-officio sheriff under O.C.G.A. § 48-5-137 could be subject to a money rule petition filed by the holder of county tax executions for refusing to pay those executions from the excess proceeds of tax sales of property; the holder could collect on the holder's execution from any property in which the taxpayer had an interest, which included the excess proceeds from the tax sale, before any payments to the taxpayer, under O.C.G.A. § 48-2-56(a) and (b), so it was error for the commissioner to refuse to pay the holder's claims. Scott v. Vesta Holdings I, LLC, 275 Ga. App. 196, 620 S.E.2d 447 (2005).

Policies underlying bond requirement. — Twin public policies recognized by the requirement that bonds be obtained by sheriffs and their deputies are: (1) the county law enforcement officer should be held liable for tortious activity, even if connected with the officer's official duties; and (2) sheriffs and deputies should be required to obtain insurance lest the officer's liability should be rendered meaningless by the officer's poverty. Thompson v. Spikes, 663 F. Supp. 627 (S.D. Ga. 1987).

Cited in Meeks v. Douglas, 108 Ga. App. 424, 133 S.E.2d 768 (1963); Nations v. Winter, 165 Ga. App. 890, 303 S.E.2d 64 (1983); Live Oak Consulting, Inc. v. Dep't of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 137 et seq.

ALR. — Liability for death of or injury to prisoner, 46 ALR 94; 50 ALR 268; 61 ALR 569.

Exception as regards payments to officers of court to rule preventing recovery back of payments made under mistake of law, 111 ALR 637.

Liability of police officer or his bond for injuries or death of third persons resulting from operation of motor vehicle by subordinate, 15 ALR3d 1189.

Civil liability of judicial officer for malicious prosecution or abuse of process, 64 ALR3d 1251.

15-13-2. Liability of sheriffs to damage action or contempt.

Any sheriff shall be liable to an action for damages or an attachment for contempt of court, at the option of the party, whenever it appears that the sheriff has injured the party by:

(1) Making a false return;

(2) Neglecting to arrest a defendant;

(3) Neglecting to levy on the property of the defendant;

(4) Neglecting to pay over to the plaintiff or his attorney any moneys collected by the sheriff by virtue of any fi. fa. or other legal process; or

(5) Neglecting to make a proper return of any writ, execution, or other process put into the hands of the sheriff. (Laws 1799, Cobb's 1851 Digest, p. 576; Code 1863, § 3853; Code 1868, § 3873; Code 1873, § 3949; Code 1882, § 3949; Civil Code 1895, § 4770; Civil Code 1910, § 5342; Code 1933, § 24-202.)

Law reviews. — For annual survey of real property law, see 57 Mercer L. Rev. 331 (2005); 58 Mercer L. Rev. 367 (2006).

JUDICIAL DECISIONS

Sovereign immunity waived. — Sheriff's claim that the trial court improperly awarded a corporation purchaser the excess funds obtained in a tax sale of real property because the sheriff was entitled to sovereign immunity was rejected as O.C.G.A. § 15-13-2(4) waived the sheriff's sovereign immunity to the claim. Barrett v. Marathon Inv. Corp., 268 Ga. App. 196, 601 S.E.2d 516 (2004).

Sheriff liable for neglect or violation of duty. — Rule against sheriff is not limited to cases enumerated in the statutes; the sheriff is certainly liable for neglect or violation of duty. Crawford v. Williams, 76 Ga. 792 (1886).

Rule against sheriff cannot be brought in favor of a dead man. Lee v. Armstrong, 49 Ga. 609 (1873).

Fine paid under a void indictment cannot be recovered by a rule against the sheriff. McDonald v. Sowell, 129 Ga. 242, 58 S.E. 860, 12 Ann. Cas. 701 (1907).

Liability for contempt. — Although sheriff may be liable in action for damages, the sheriff is not necessarily liable for contempt; this latter liability depends on the good faith of the sheriff's conduct. Heard v. Callaway, 51 Ga. 314 (1874); In re Smith, 205 Ga. App. 857, 424 S.E.2d 45, cert. denied, 205 Ga. App. 900, 424 S.E.2d 45 (1992).

Before failure to levy will come within the terms of this section, it must appear: (1) that the sheriff is in contempt of court; and (2) that the plaintiff was injured by the contempt. Hunter v. Phillips, 56 Ga. 634 (1876) (see now O.C.G.A. § 15-13-2).

Failure to sell after levy is as much a breach of official duty as neglecting to levy. Wilkins v. American Freehold Land Mtg. Co., 106 Ga. 182, 32 S.E. 135 (1898).

Sheriff liable to plaintiff if defendant released without bond. — If the sheriff arrests the defendant and discharges the defendant without bond for the defendant's appearance, the fact that the sheriff takes an obligation from a friend of the defendant to save the sheriff harmless in the event of a recovery by the plaintiff will not keep the sheriff from

being ruled for the money if the plaintiff obtains a judgment and a return of no property is made. DeLongchamp v. J.W. Hicks & Co., 25 Ga. 200 (1858).

Receipt of debtor's check in lieu of execution of process is no defense for sheriff, and sheriff is liable for any loss. Ketcham v. Hines, 29 Ga. App. 627, 116 S.E. 225 (1923).

Cited in A.A. Parker Produce, Inc. v. Mercer, 221 Ga. 449, 145 S.E.2d 237 (1965).

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, §§ 23, 31 et seq.

ALR. — Steps to be taken by officer before resale upon default of purchaser at judicial or execution sale, 24 ALR 1330.

Personal liability of party who places execution or attachment in hands of official, for wrongful levy thereunder upon property of third person, 91 ALR 922.

Liability of sheriff or other officer executing process of execution or attachment for failure to seize sufficient property, 93 ALR 316.

Return of service of process in action in personam showing personal or constructive service in state as subject to attack by showing that defendant was a nonresident and was not served in state, 107 ALR 1342.

Duty of sheriff or other officer as to care of property levied upon by him, 138 ALR 710.

What amounts to false return of execution or attachment; justification of alleged false return, 157 ALR 194.

Use of affidavits to establish contempt, 79 ALR2d 657.

15-13-3. Demand for money collected; interest from date of demand; verified copy as evidence.

(a) If any sheriff, coroner, magistrate, constable, clerk of the superior court, or attorney at law fails, upon application, to pay to the proper person or his attorney any money he may have in his hands which he may have collected by virtue of his office, the party entitled thereto or his attorney may serve such officer with a written demand for the same. If not then paid, for such neglect or refusal the officer shall be compelled to pay interest at the rate of 20 percent per annum upon the sum he has in his hands from the date of the demand, unless good cause is shown to the contrary.

(b) A copy of the demand produced in court, verified by affidavit stating when and where the original was served upon the officer, shall be prima-facie evidence of the date and service thereof. (Laws 1822, Cobb's 1851 Digest, p. 578; Laws 1841, Cobb's 1851 Digest, p. 579; Code 1863, §§ 3854, 3855; Code 1868, §§ 3874, 3875; Code 1873, §§ 3950, 3951; Code 1882, §§ 3950, 3951; Civil Code 1895, §§ 4771, 4772; Civil Code 1910, §§ 5343, 5344; Code 1933, §§ 24-206, 24-207; Ga. L. 1983, p. 884, § 4-1.)

Law reviews. — For annual survey on real property, see 65 Mercer L. Rev. 233 (2013).

JUDICIAL DECISIONS

Section is penal in nature and to be strictly construed. — While the right to rule an attorney for money alleged to be in the attorney's possession is penal in nature and must be strictly construed, the proceeding is a civil action wherein the preponderance of evidence rule applies. Commins v. Ross, 44 Ga. App. 182, 160 S.E. 679 (1931); Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943); Aiken v. Richardson, 210 Ga. 728, 82 S.E.2d 646, appeal dismissed, 348 U.S. 866, 75 S. Ct. 105, 99 L. Ed. 682 (1954).

Suing out money rule against levying officer is, in effect, bringing a civil action against the officer. Commins v. Ross, 44 Ga. App. 182, 160 S.E. 679 (1931).

Cases of setoff, as with money rules, are not equity cases. — By parity of reasoning regarding those cases of statutory money rule against levying officers, which are not equity cases, and those of setoff allowed by statute, the pursuit of the remedy allowed by former Code 1933, § 108-501 does not make an "equity case" of which the Supreme Court has exclusive jurisdiction. Robinson v. Lindsey, 184 Ga. 684, 192 S.E. 910 (1937).

Supreme Court lacks equity jurisdiction without equity allegation. — If petition contains no allegations showing any right in plaintiffs to equitable relief, but the only judgment sought is one, requiring officers to pay over to the county treasurer certain sums alleged to be in their hands and to which the county is entitled, it is not a case of which the Supreme Court has equity jurisdiction. Rucker v. Stark, 209 Ga. 496, 74 S.E.2d 74, transferred to Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

City court clerk liable for failure to account for money. — If act creating city court makes the clerk thereof amenable to all the duties and liabilities attached to the office of clerk of the superior court, the clerk may be ruled under former Code 1933, § 24-2722 (see now O.C.G.A. § 15-6-83) upon the clerk's failure to account faithfully for money coming into the clerk's hands, and also under former Code 1933, § 24-201 (see now O.C.G.A. § 15-13-1). Ivester v. Mozeley, 89 Ga. App. 578, 80 S.E.2d 197 (1954).

Attorneys are liable to same rule as sheriffs. — If attorneys retain in their hands money from their clients after the money has been demanded, the attorneys are liable as to rule as sheriffs are. Commins v. Ross, 44 Ga. App. 182, 160 S.E. 679 (1931).

Penalty collectible from attorney by action other than rule. — Right of the client to the 20 percent penalty for withholding money collected after written demand does not necessarily depend on the client proceeding against the attorney under the money rule summary proceeding. Nations v. Winter, 165 Ga. App. 890, 303 S.E.2d 64 (1983).

Right to rule attorney limited to client. — Right to rule an attorney for the payment of money depends upon the existence of the relation of attorney and client, and is limited to the client. Breen v. Phillips, 169 Ga. 13, 149 S.E. 565 (1929); Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943).

Rule instituted by a client against an attorney at law is amendable. Aiken v. Richardson, 80 Ga. App. 591, 56 S.E.2d 782 (1949).

Statute makes 20 percent the legal rate of interest on a sum collected by an attorney and not paid over from the date of the demand by the client; therefore, if the verdict for the amount is "with legal interest," a judgment of 20 percent is right. Gray v. Conyers, 70 Ga. 349 (1883).

When a trial court found a tax commissioner improperly refused to pay a tax execution holder's executions, but did not find the commissioner had good cause for the refusal and did not award the holder 20 percent interest, pursuant to O.C.G.A. § 15-13-3(a), the matter had to be remanded for a determination of the good cause issue and to consider the holder's entitlement to one percent interest per month pursuant to O.C.G.A. §§ 48-2-40 and 48-3-20. Scott v. Vesta Holdings I, LLC, 275 Ga. App. 196, 620 S.E.2d 447 (2005).

No demand necessary if attorney dead unless 20 percent interest

sought. — No demand is necessary to the commencement of an action by a client against an attorney who has collected money for the client and failed to pay the money over, or against the attorney's legal representative if the attorney is dead; if it is sought to recover 20 percent interest for withholding payment after written demand, such demand would then be necessary. Shepherd, Hooper & Co. v. Crawford, 71 Ga. 458 (1883).

Attorney not subject to rule by receiver for payment of balance of fee. — If plaintiff dismissed plaintiff's receivership proceeding, and defendant gave a check for the receiver's fee, but plaintiff's attorney, without authority from the defendant or the receiver, struck the receiver's name and had the check paid to the attorney, kept a portion for the attorney's fee and paid the receiver the receiver's portion, the attorney was not subject to rule by the receiver. Breen v. Phillips, 169 Ga. 13, 149 S.E. 565 (1929).

Defendant cannot enforce claim by rule against plaintiff's attorney. — If, as a result of an action instituted by an attorney for a client, money has come into the hands of the attorney, for the defendant in that action who claims title to the money but who is not the client of the attorney, cannot enforce the client's claim by rule against the attorney. Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943).

Rule not granted when debt denied. — Otherwise summary remedy of a rule nisi is not available in an action to collect funds allegedly withheld by an attorney if the attorney answers the complaint in writing and effectively denies the complaint's allegations. West v. Haupt, 163 Ga. App. 907, 296 S.E.2d 723 (1982).

Claimant did not have right to excess funds generated by tax sale. — Claimant's petition for a money rule judgment was properly dismissed as the claimant did not obtain an interest in the excess funds generated at a tax sale through a quitclaim deed from the delinquent taxpayer; the taxpayer did not have an interest in the real property to convey and while the quitclaim deed provided for the transfer of any rights created under the tax deed, the rights created under a tax deed ran only to the purchaser of the property at the tax sale. Ga. Lien Servs. v. Barrett, 272 Ga. App. 656, 613 S.E.2d 180 (2005).

Trial court did not err in granting a tax commissioner summary judgment in a lienholder's action under O.C.G.A. § 15-13-3 to recover excess funds from a tax sale because at the time of the tax sale, at the time the tax commissioner notified the record owner of the property and record lienholders of the excess tax sale funds, and at the time the tax commissioner paid the excess tax sale funds to the record owner of the property, the lienholder had no recorded lien or interest in the property; after the tax commissioner fulfilled the obligation under O.C.G.A. § 48-4-5(a) to give notice to the record property owner and lienholders, the property owner submitted the only claim to the tax commissioner for the excess tax sale funds, and the lienholder failed to show that more was required of the tax commissioner before the funds were disbursed. Brina Bay Holdings, LLC v. Echols, 314 Ga. App. 242, 723 S.E.2d 533 (2012).

Trial court did not err in granting a surety summary judgment in a lienholder's action under O.C.G.A. § 15-13-3 to recover excess funds from a tax sale because as the surety on the bond for the tax commissioner, the surety had no liability when the tax commissioner had none, O.C.G.A. § 10-7-2, and the tax commissioner was not liable. Brina Bay Holdings, LLC v. Echols, 314 Ga. App. 242, 723 S.E.2d 533 (2012).

Cited in Barge v. Ownby, 170 Ga. 440, 153 S.E. 49 (1930); Alsabrook v. Prudential Ins. Co., 174 Ga. 637, 163 S.E. 706 (1932); Atlanta Coach Co. v. Simmons, 184 Ga. 1, 190 S.E. 610 (1937); Aiken v. Richardson, 85 Ga. App. 180, 68 S.E.2d 228 (1951); Aiken v. Richardson, 209 Ga. 837, 76 S.E.2d 393 (1953); Hasty v. Grimes, 96 Ga. App. 145, 99 S.E.2d 450 (1957).

OPINIONS OF THE ATTORNEY GENERAL

Constable may be ruled for contempt in superior or magistrate courts. — Constable failing to pay over any money coming into constable's possession may be ruled for contempt either in superior court or in the justice of the peace (now magistrate) court. 1952-53 Op. Att'y Gen. p. 33.

RESEARCH REFERENCES

ALR. — Right of attorney to jury trial where he is charged with failure to turn over money or property to client, 22 ALR 1501.

Personal liability of attorney to one other than his client for damages resulting from erroneous judicial action, 87 ALR 174.

Exception as regards payments to officers of court to rule preventing recovery back of payments made under mistake of law, 111 ALR 637.

Power of court to order restitution to wronged client in disciplinary proceeding against attorney, 75 ALR3d 307.

15-13-4. Rule nisi; service.

The judges of the superior courts, judges of the probate courts, and magistrates, respectively, upon application, may grant rules nisi against all officers subject thereto, which rules nisi shall contain a full statement of the case in which the officer is called upon to show cause and also of the time and place of hearing. The officer called on by the rule nisi shall be served with a copy thereof within a reasonable time before the hearing. (Laws 1841, Cobb's 1851 Digest, p. 580; Code 1863, § 3857; Code 1868, § 3877; Code 1873, § 3953; Code 1882, § 3953; Civil Code 1895, § 4774; Civil Code 1910, § 5346; Code 1933, § 24-209; Ga. L. 1983, p. 884, § 4-1.)

JUDICIAL DECISIONS

It is within the power of court to compel obedience to the court's judgments, orders, and process in an action or proceeding therein; also to control, in furtherance of justice, the conduct of the court's officers and all other persons connected with a judicial proceeding before the court in every matter appertaining thereto. Miller Serv., Inc. v. Miller, 77 Ga. App. 413, 48 S.E.2d 761 (1948).

Rule against attorney may be heard and disposed of at term to which it is made returnable. Screven Oil Mill v. Guyton, 44 Ga. App. 820, 162 S.E. 920 (1932).

Denial of rule. — Otherwise summary remedy of a rule nisi is not available in an action to collect funds allegedly withheld by an attorney if the attorney answers the complaint in writing and effectively denies the complaint's allegations. West v. Haupt, 163 Ga. App. 907, 296 S.E.2d 723 (1982).

Formal attack unnecessary if insufficiency of answer absolute. — While it is not improper procedure to file a motion to strike an answer demanding a jury trial when it shows no issuable fact, this section does not require such a formal attack when the insufficiency of the answer itself authorizes a rule absolute. Wilkins v. Jordan, 50 Ga. App. 119, 177 S.E. 344 (1934).

Specific, undenied answer precludes hearing of testimony. — Hearing of testimony is erroneous absent a denial of a sheriff's answer if the answer sets forth specific facts constituting meritorious matters of defense which tend to prevent the issuance of a rule absolute.

Wilkins v. Jordan, 50 Ga. App. 119, 177 S.E. 344 (1934).

Limit of 18 months for exceptions to sufficiency of rule nisi. — Exceptions to the sufficiency of a rule nisi against sheriff taken upon the trial 18 months after the filing of the rule are too late. Thompson v. Central Bank, 9 Ga. 413 (1851).

Rule nisi may be entered nunc pro tunc. — When there has been an omission to enter a rule nisi against the sheriff upon the minutes at the time it was taken, it may be afterwards entered nunc pro tunc. Brannon v. Central Bank, 18 Ga. 361 (1855).

Absent allegation warranting action, rule nisi to be issued. — If sheriff is made party to action seeking to compel sheriff and defendant to show cause why sheriff should accept an affidavit of illegality and why the affidavit should not be dismissed, but if there is neither an allegation that the sheriff is about to fail in the performance of the sheriff's official duty nor that demand for any official action has been made to the sheriff nor that the sheriff is about to commit any unwarranted or illegal act, the allegations and prayers do not make out an action either in mandamus or prohibition, but merely ask the court to issue a rule nisi for the sought after action. Spence v. Miller, 176 Ga. 96, 167 S.E. 188 (1932).

Sheriff liable in contempt for process issued in another county. — While it has been held that "a petition for a rule against the sheriff of a city court for failure to make proper returns of money received by the sheriff from the sale of property under an execution issued from and returnable to the city court will not lie in the superior court unless there is a prayer for special equitable relief" the rules in those cases were issued against the sheriff of the city court acting within the sheriff's own county and in the sheriff's capacity as an officer of the city court under process made returnable to that court; and these rulings would not have application if the process was sent for execution outside of the county in which it was issued and was delivered to the sheriff of another county, who, as an officer of the superior court of the sheriff's own county, acted under the court's supervision and was subject to the court's authority and, under former Code 1933, § 24-210 (see now O.C.G.A. § 15-13-5), was liable to its attachment for contempt for failure to perform properly the sheriff's duties and functions as sheriff of the sheriff's own county. Pyles v. Keels, 50 Ga. App. 490, 178 S.E. 412 (1935).

Erroneous amount to be executed. — This section authorizes proceeding if execution was issued by clerk contrary to terms of judgment and was paid by the defendant in fieri facias and marked satisfied by the clerk; court has the power to have the clerk recall such an execution and offer to refund the money paid to the clerk by the defendant in fieri facias. Miller Serv., Inc. v. Miller, 77 Ga. App. 413, 48 S.E.2d 761 (1948).

Cited in Butler v. Tattnall Bank, 140 Ga. 579, 79 S.E. 456 (1913); Crawford County Bank v. Britt-Hightower Co., 17 Ga. App. 804, 88 S.E. 691 (1916); Gaston v. Shunk Plow Co., 161 Ga. 287, 130 S.E. 580 (1925).

OPINIONS OF THE ATTORNEY GENERAL

Constable may be ruled for contempt in superior or magistrate court. — Constable failing to pay over any money coming into the constable's possession may be ruled for contempt either in superior court or in the justice of the peace (now magistrate) court. 1952-53 Op. Att'y Gen. p. 33.

15-13-5. Verified answer; jury trial; disposition.

The officer called on by rule nisi, as provided in Code Section 15-13-4, shall fully respond in writing to the rule, which answer shall be under oath taken at the time the answer is filed. If the answer is not denied, the rule shall be discharged or shall be made absolute, depending on

whether the court deems the answer sufficient. The movant of the rule may traverse the truth of the answer, in which case an issue shall be made and tried by a jury at the same term unless good cause for continuance is shown, which may be done only once by each party. Upon the trial of such issue the court shall discharge the rule or shall make the rule absolute, depending on whether the verdict of the jury is for or against the officer. (Laws 1840, Cobb's 1851 Digest, p. 579; Code 1863, § 3858; Code 1868, § 3878; Code 1873, § 3954; Code 1882, § 3954; Civil Code 1895, § 4775; Civil Code 1910, § 5347; Code 1933, § 24-210.)

JUDICIAL DECISIONS

Section is penal in nature and to be strictly construed. — Money rule against attorney is penal in nature and must be strictly construed, but the proceeding is a civil action wherein the preponderance of the evidence rule applies. Aiken v. Richardson, 210 Ga. 728, 82 S.E.2d 646, appeal dismissed, 348 U.S. 866, 75 S. Ct. 105, 99 L. Ed. 682 (1954).

Failure to answer rule nisi results in default. — When called on to answer a rule nisi, an officer is bound to do so or to suffer the consequences of a default. Able v. Consolidated Loan & Fin. Co., 118 Ga. App. 42, 162 S.E.2d 760 (1968).

Service of notice of continuance not required. — There is no provision of law requiring service of notice of continuance of the hearing on a rule nisi once served on a party. Able v. Consolidated Loan & Fin. Co., 118 Ga. App. 42, 162 S.E.2d 760 (1968).

This section has no application to answer of husband in contempt proceeding to enforce payment of temporary alimony. Beavers v. Beavers, 148 Ga. 506, 97 S.E. 65 (1918).

Rule against attorney may be heard and disposed of at term to which it is made returnable. Screven Oil Mill v. Guyton, 44 Ga. App. 820, 162 S.E. 920 (1932).

Judge is authorized to enter rule absolute without a jury and without hearing evidence personally, since it is only a verified answer and one that shall fully respond to the rule nisi without being vague, uncertain, indefinite, or evasive which the statute requires to be denied in order to create an issue for jury trial, or which the judge, in the absence of a denial, must accept as sufficient and true so as to discharge the rule. Wilkins v. Jordan, 50 Ga. App. 119, 177 S.E. 344 (1934).

Plaintiff may prove value of goods personally or use others. — If the answer of the sheriff states that the goods received were of little value, the plaintiff has the right to traverse and prove the value either personally or with other witnesses. Lindsey v. Cock, 40 Ga. 7 (1869).

Evidence introduced without objection considered even without traverse. — When upon the hearing of a rule nisi to show cause why an officer should not be attached for disobedience of an order or decree directing the officer to pay over money to the movant, evidence in the latter's favor was introduced without objection, it was the duty of the judge to consider such evidence in making a judgment, even though no written traverse of the officer's answer had been filed. Harris v. Lamar, 102 Ga. 154, 29 S.E. 162 (1897).

Traverse of answer to remedial proceeding for contempt is not necessary, and court can hear, without such traverse, evidence to determine whether the defendant has or has not violated the order of the court. Gaston v. Shunk Plow Co., 161 Ga. 287, 130 S.E. 580 (1925).

Movant cannot file denial after court proceeds to discharge rule. — While the movant may deny the answer at any time before the rule is discharged, yet if the court proceeds at the first term to hear and discharge the rule upon the verified and undenied answer of the respondent, the movant cannot then file a

denial and demand as a matter of right that the rule be reinstated. Screven Oil Mill v. Guyton, 44 Ga. App. 820, 162 S.E. 920 (1932).

Burden of proof on traversing plaintiff. — In an issue formed by a plaintiff against the sheriff, controverting the truth of the sheriff's return, the burden of proof is upon the plaintiff, and the plaintiff has a right to open and conclude the argument before the jury. Buchanan v. McDonald, 40 Ga. 286 (1886).

Rule absolute set aside if no foundation exists or if fraudulent. — That there is no foundation for the rule absolute and that it was obtained by fraud are sufficient causes for setting it aside. Davis v. Dempsey, 15 Ga. 182 (1854).

Discretion of court in making rule absolute when answer evasive. — If attorney's answer is evasive in a proceeding under this section and is no response to the rule nisi, the discretion of the court below in making the rule absolute will not be interfered with. Wilkins v. Jordan, 50 Ga. App. 119, 177 S.E. 344 (1934); Aiken v. Richardson, 85 Ga. App. 180, 68 S.E.2d 228 (1951), appeal dismissed, 344 U.S. 802, 73 S. Ct. 15, 97 L. Ed. 625 (1952).

Rule absolute against sheriff is conclusive against the sheriff and prima facie evidence against the sheriff's securities. Taylor v. Johnson ex rel. Carmichael, 17 Ga. 521 (1855).

Proceeding in attachment for contempt is brought up on fast writ as in injunction cases. Pettitt v. Henson, 50 Ga. App. 196, 177 S.E. 355 (1934).

Cited in Heard v. Callaway, 51 Ga. 314 (1874); Felton v. Smith, 52 Ga. App. 436, 183 S.E. 634 (1936).

15-13-6. When rule absolute granted without notice.

If a sheriff or other officer designedly absents himself from his court, the presiding judge or justice, when required by plaintiffs in execution or their attorneys, shall grant a rule absolute against the sheriff or other officer without the notice provided for in Code Section 15-13-4 unless it is proved at such term of the court that the sheriff or other officer, from sickness, is not able to attend the court. (Laws 1841, Cobb's 1851 Digest, p. 579; Code 1863, § 3859; Code 1868, § 3879; Code 1873, § 3955; Code 1882, § 3955; Civil Code 1895, § 4777; Civil Code 1910, § 5349; Code 1933, § 24-212.)

15-13-7. Liability of magistrates and constables to rule nisi.

Magistrates and constables shall be considered officers of the superior court so far as to be subject to be ruled under similar conditions as are provided in relation to any other officer of the court and shall be subject to all the penalties as are provided in case of a rule absolute against sheriffs and other officers of the court when they, or either of them, refuse or neglect to collect or to pay over any money which they may have received or collected in their official capacities. (Laws 1820, Cobb's 1851 Digest, p. 649; Laws 1839, Cobb's 1851 Digest, p. 651; Code 1863, § 3865; Code 1968, § 3885; Code 1873, § 3961; Ga. L. 1876, p. 37, § 1; Code 1882, § 3961; Civil Code 1895, §§ 4060, 4782; Civil Code 1910, §§ 4657, 5354; Code 1933, § 24-205; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 22, § 15.)

History of Code section. — The language in this Code section is derived in part from the decision in Barrett & Caswell v. Pulliam, 77 Ga. 552 (1886).

Cross references. — Liability of magistrates and constables to be ruled, Rules of the Judicial Qualifications Commission.

JUDICIAL DECISIONS

Power to punish magistrate. — This section cannot be construed to give the superior court power to punish a justice of the peace (now magistrate) for taking an affidavit of a prisoner brought before the justice by the jailor. In re Russell, 54 Ga. 621 (1875).

No rule lies against a justice of the peace (now magistrate) if the justice has collected money on a garnishment and paid the money to the sheriff. Taylor v. Benjamin, 76 Ga. 762 (1886).

City court lacks jurisdiction over constable of magistrate court. — City Court of Decatur does not have jurisdiction to rule against constable of justice of the peace (now magistrate) court to require constable to pay over money alleged to have been collected under an execution issued from a justice of the peace (now magistrate) court. Richardson v. Waits, 58 Ga. App. 143, 198 S.E. 116 (1938).

Fact that constable made levy after rule absolute to which claim was interposed and sustained would not relieve the constable from attachment for failure to pay under the rule absolute. Langley v. Wynn, 70 Ga. 430 (1883).

Magistrate court subject to same procedures. — This section makes justice of the peace (now magistrate) subject to same procedure as other officers; one month's written notice is not required. Christopher v. Nixon, 134 Ga. 7, 67 S.E. 406 (1910).

Damages must be alleged by reason of the failure, refusal, or neglect of the justice of the peace (now magistrate). Barrett & Caswell v. Pulliam, 77 Ga. 552 (1886).

Cited in Abbott v. Holland, 20 Ga. 598 (1856).

OPINIONS OF THE ATTORNEY GENERAL

Constable may be ruled for contempt in superior or magistrate court. — Constable failing to pay over any money coming into the constable's possession may be ruled for contempt either in superior court or in the justice of the peace (now magistrate) court. 1952-53 Op. Att'y Gen. p. 33.

15-13-8. Retired officers subject to court order.

Sheriffs, deputy sheriffs, coroners, clerks of the superior courts, magistrates, and constables shall be subject to the rule and order of the courts at any and all times after they have retired from their respective offices, in such cases and in like manner as they would have been had they remained in office. (Laws 1813, Cobb's 1851 Digest, p. 202; Code 1863, § 3856; Code 1868, § 3876; Code 1873, § 3952; Code 1882, § 3952; Civil Code 1895, § 4773; Civil Code 1910, § 5345; Code 1933, § 24-208; Ga. L. 1983, p. 884, § 4-1.)

JUDICIAL DECISIONS

Sheriff timely turning over fieri facias to successor not liable. — If sheriff turns over fieri facias to the sheriff's successor in time to make the money,

the first sheriff is not liable. Cason v. Mulling, 50 Ga. 598 (1874).

Affidavit of illegality interposed which arrests execution will not make first sheriff liable if the levy is made and the process is turned over to the sheriff's successor. Lauham v. Vaughan, 26 Ga. 358 (1858).

Former sheriff liable for money not paid over. — When the former sheriff had in the sheriff's hands money belonging to the plaintiff and failed to pay over upon demand made therefor, the sheriff was liable not only for the principal, interest, and costs which the sheriff had collected on the plaintiff's fieri facias, but also for the costs in the rule against the sheriff instituted by the plaintiff to recover the money. Sutton v. Robinson, 72 Ga. 195 (1883).

Cited in Hand, Williams & Co. v. Greenville & Sample, 22 Ga. 476 (1857).

15-13-9. Deputy sheriff's liability; effect on sheriff.

All deputy sheriffs shall be liable to be ruled and attached in the same way and manner as sheriffs. However, the liability of the sheriff shall not be affected by any such proceeding against his deputy when the same is not effective. (Laws 1841, Cobb's 1851 Digest, p. 580; Code 1863, § 3863; Code 1868, § 3883; Code 1873, § 3959; Code 1882, § 3959; Civil Code 1895, § 4780; Civil Code 1910, § 5352; Code 1933, § 24-203.)

JUDICIAL DECISIONS

After the deputy pays the money collected to the sheriff, the deputy is released. Varner v. Wootten, 38 Ga. 575 (1869).

Sheriff liable for deputy's taxing notes of third persons. — If deputy taxes notes of third persons and gives receipt in full, the deputy's act is no payment and the sheriff is liable therefor. Reynolds v. Dale, 33 Ga. 585 (1863).

Cited in Jackson v. Luckie, 205 Ga. 100, 52 S.E.2d 588 (1949).

15-13-10. Appointment of special officer to execute rule or order against sheriff or deputy.

Whenever the sheriff or his deputy is a party to any rule or is interested therein and there is no coroner or other lawful officer of the county to execute the same, it shall be the duty of the judge or justice of the court to appoint pro tempore a special officer to carry out and effectuate the order of the court, for which the appointed officer shall be allowed the usual fees of sheriffs for like service. (Laws 1840, Cobb's 1851 Digest, p. 580; Code 1863, § 3864; Code 1868, § 3884; Code 1873, § 3960; Code 1882, § 3960; Civil Code 1895, § 4781; Civil Code 1910, § 5353; Code 1933, § 24-204.)

JUDICIAL DECISIONS

Sheriffs are disqualified from performing official duties in cases in which sheriffs have an interest. Abrams v. Abrams, 239 Ga. 866, 239 S.E.2d 33 (1977).

Cited in State v. Jeter, 60 Ga. 489 (1878).

OPINIONS OF THE ATTORNEY GENERAL

No authorization for criminal arrest of sheriff. — Former Code 1933, § 24-204 (see now O.C.G.A. § 15-13-10) was similar in import to former Code 1933, § 39-114 (see now O.C.G.A. § 9-13-11); both applied to civil matters involving orders, decrees, attachments, executions, and final processes, and did not give authority to arrest a sheriff in criminal matters. 1973 Op. Att'y Gen. No. 73-93.

15-13-11. Rule absolute as lien on officer's property.

When a rule absolute has been obtained against any officer for the payment of money, as provided in Code Sections 15-13-4 and 15-13-5, the rule shall constitute the same lien upon the property, both real and personal, of the officer as an ordinary judgment at law; and, if not punctually paid, the demand shall thereafter draw interest at the rate of 20 percent per annum. The plaintiff may have either an attachment or an execution issued upon the rule absolute and may have either of the processes returned and the other issued, at pleasure. (Ga. L. 1858, p. 90, § 1; Code 1863, § 3860; Code 1868, § 3880; Code 1873, § 3956; Code 1882, § 3956; Civil Code 1895, § 4778; Civil Code 1910, § 5350; Code 1933, § 24-214.)

JUDICIAL DECISIONS

Interest provided by this section is not dependent upon demand for the money. Fite v. Black, 92 Ga. 363, 17 S.E. 349 (1893).

Judgment for costs may be set off. — As the rule is a lien, judgment for costs may be set off against the judgment for the plaintiff for the money in the hands of the sheriff. Robertson v. Smith, 37 Ga. 604 (1868).

Return to clerk's office is sufficient; it is not necessary that levying officer shall make entry dismissing the levy. Smith v. McLendon, 59 Ga. 523 (1877).

Correct granting of both attachment and execution in court below. — Plaintiff may have either an attachment or execution issued on the rule; when both are granted, the Supreme Court will not interfere as it is an error that will be corrected by the court below. Clement v. Bunn, 60 Ga. 334 (1878).

Cited in Aiken v. Richardson, 210 Ga. 728, 82 S.E.2d 646 (1954).

15-13-12. Date of lien against officer's property.

Unless otherwise provided by law, a rule absolute granted against a sheriff, constable, or other officer who has defaulted in his duty shall constitute a lien on his property from the date of rendition but shall be of equal date with other judgments rendered against the officer within the same term of court. (Orig. Code 1863, § 1994; Code 1868, § 1984; Code 1873, § 2001; Code 1882, § 2001; Civil Code 1895, § 2826; Civil Code 1910, § 3376; Code 1933, § 24-215.)

15-13-13. When officer may pay money over to plaintiff; claims; distribution by court; effect on notified parties.

(a) Where money is in the hands of an officer, he may pay it over to the plaintiff by whose process it was raised, unless other claimants deposit their liens with him. Notice to retain is insufficient unless accompanied by a lien.

(b) Money raised by legal process not being subject to levy and sale, the court in making distribution shall proceed upon equitable principles.

(c) All parties intervening shall, by appropriate pleading, set forth the ground of their claim to the fund.

(d) All persons interested who are notified in writing by the sheriff or movant of the pendency of the rule shall be bound by the judgment of distribution. (Civil Code 1895, § 4776; Civil Code 1910, § 5348; Code 1933, § 24-211.)

History of Code section. — This Code section is derived from the decisions in Foster v. Rutherford, 20 Ga. 668 (1856); Estes v. Ivey, 53 Ga. 52 (1874); Columbus Factory v. Herndon, 54 Ga. 210 (1875); and Barrett & Caswell v. Pulliam, 77 Ga. 552 (1886).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
EQUITY
PRIORITY OF LIENS
PRACTICE AND PROCEDURE

General Consideration

Section controls money raised by legal process. — Judgment creditor, in the collection of a fieri facias, is not restricted to the creditor's right to rule the officer who has levied another process on the creditor's debtor's property, nor is a creditor required to anticipate that such a levy will be made; this section refers to money raised by legal process. Barkley v. May, 3 Ga. App. 101, 59 S.E. 440 (1907).

Funds not disbursed if money rule filed. — Trial court may not order the sheriff to disburse funds held in accord with O.C.G.A. § 15-13-13 if valid money rules claiming a portion of the funds are filed against the sheriff. Henson & Henson v. Myszka, 160 Ga. App. 135, 286 S.E.2d 456 (1981).

Plaintiff may agree that purchaser pay others. — Sheriff is relieved from liability by an agreement of the plaintiff in fieri facias that the purchaser at a sheriff's sale should make payments to others. Scott v. Ward, 22 Ga. App. 680, 97 S.E. 207 (1918).

Cited in Armour Car Lines v. Summerour, 5 Ga. App. 619, 63 S.E. 667 (1909); Morris v. First Nat'l Bank, 20 Ga. App. 60, 92 S.E. 396 (1917); Coweta Fertilizer Co. v. Kiser Co., 33 Ga. App. 278, 125 S.E. 793 (1924); Brown v. Smith, 50 Ga. App. 332, 178 S.E. 180 (1935); Holbrook v. Stewart, 55 Ga. App. 720, 191 S.E. 165 (1937); Edmonds v. Beatie, 62 Ga. App. 246, 8 S.E.2d 559 (1940); Head v. Trustees of Jessee Parker Williams Hosp., 190 Ga. 360, 9 S.E.2d 171 (1940); Masters v. Pardue, 91 Ga. App. 684, 86 S.E.2d 704

(1955); Milam v. Adams, 101 Ga. App. 880, 115 S.E.2d 252 (1960); Golfland, Inc. v. Thomas, 107 Ga. App. 563, 130 S.E.2d 757 (1963); Sabino v. United States, 220 Ga. 391, 139 S.E.2d 295 (1964); Imperial Body Works, Inc. v. Waters, 156 Ga. App. 887, 275 S.E.2d 822 (1981); Myszka v. Henson & Henson, 170 Ga. App. 878, 318 S.E.2d 672 (1984).

Equity

Money rule under this section is not "equity case" as contemplated by Ga. Const. 1976, Art VI, Sec. II, Para. IV (see now Ga. Const. 1983, Art. VI, Sec. VI, Para. III), in prescribing the jurisdiction of the Supreme Court. Alsabrook v. Prudential Ins. Co., 174 Ga. 637, 163 S.E. 706 (1932).

Court proceeds upon equitable principles. — That the court shall proceed in making a disposition of money rule upon equitable principles is expressly provided. Barron Buick, Inc. v. Kennesaw Fin. Co., 105 Ga. App. 451, 124 S.E.2d 918 (1962).

Unless only legal rights invoked. — If holder of unforeclosed mortgage invokes equitable principles, such as the insolvency of the debtor, the court will apply equitable principles in a money rule proceeding, but if such claimant invokes only legal rights, the court will proceed upon legal principles. General Fin. & Thrift Corp. v. Bank of Wrightsville, 92 Ga. App. 808, 90 S.E.2d 93 (1955).

Effect being given to all claimants' rights. — Rule to distribute money in the hands of an officer proceeds upon equitable principles, effect being given, so far as may be warranted by the pleadings and the evidence, to the rights of all the claimants to the fund. Coleman v. Slade & Etheridge, 75 Ga. 61 (1885); Heard & Sutton v. W.J. Adams & Bro., 17 Ga. App. 33, 86 S.E. 260 (1915); Georgia Realty Co. v. Bank of Covington, 19 Ga. App. 219, 91 S.E. 267 (1917); J.A. Thrash & Co. v. Harman, 21 Ga. App. 98, 94 S.E. 54 (1917).

Cases of setoff not equity cases. — By parity of reasoning regarding those cases of statutory money rule against levying officers which are not equity cases, and those of setoff allowed by statute, the pursuit of the remedy allowed by former Code 1933, § 108-51 (see now O.C.G.A. § 53-12-150) does not make an "equity case" of which the Supreme Court has exclusive jurisdiction. Robinson v. Lindsey, 184 Ga. 684, 192 S.E. 910 (1937) (decided under prior law; see now Ga. Const. 1983, Art. VI, Sec. VI, Para III).

Supreme Court without equity jurisdiction under section. — If a petition contains no allegations showing any right in plaintiffs to equitable relief, but the only judgment sought is one requiring officers to pay over to the county treasurer certain sums alleged to be in the officer's hands and to which the county is entitled, it is not a case of which the Supreme Court has equity jurisdiction. Rucker v. Stark, 209 Ga. 496, 74 S.E.2d 74, transferred to Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

Equitable principles may be invoked by pleading and evidence. Continental Fertilizer Co. v. J.F. Madden & Sons, 140 Ga. 39, 78 S.E. 460 (1913).

Resort to court of equity need not be had. Georgia Realty Co. v. Bank of Covington, 19 Ga. App. 219, 91 S.E. 267 (1917).

No irregularities should defeat the real equities of parties and justice of case. Coleman v. Slade & Etheridge, 75 Ga. 61 (1885); J.A. Thrash & Co. v. Harman, 21 Ga. App. 98, 94 S.E. 54 (1917).

Defendant to be protected against multiple actions. — If a case as disclosed by the pleadings is somewhat like a money judgment and also discloses possible grounds for the grant of an interpleader in equity (see now O.C.G.A. § 23-3-90), the trial judge, although powerless to act in equity, acts properly in invoking equitable principles, as countenanced by the Civil Practice Act (see now O.C.G.A. Ch. 11, T. 9), and in thus ordering the plaintiff to proceed in a manner which will enable the court to resolve possible conflicting claims to the surplus funds held by the defendants and thereby protect the defendants from multiple actions. Leon Inv. Co. v. Independent Life & Accident Ins. Co., 123 Ga. App. 668, 182 S.E.2d 151 (1971).

Priority of Liens

Fund in controversy awarded to oldest lien. — Final award of compensation by a federal deputy commissioner was a lien against the assets of insurance carriers who became sureties upon the bonds of the employer of the longshoremen, and in a competition between such an award and judgments of this state, the matter of priority is to be determined by the comparative dates, and the fund in controversy should be awarded to the oldest lien. Ford ex rel. Southern Stevedoring Co. v. Lone Star Cement Co., 181 Ga. 212, 181 S.E. 773 (1935).

Prior lien must be higher dignity, foreclosed. — Upon the trial of a money rule, in order for the priority of a lien to be asserted, it must not only be of higher dignity than other liens contesting for the funds in the hands of the officer, but it must be a lien that has been duly foreclosed. General Fin. & Thrift Corp. v. Bank of Wrightsville, 92 Ga. App. 808, 90 S.E.2d 93 (1955).

Unforeclosed retention-of-title contract invalid as claim. — An unforeclosed retention-of-title contract, as far as foreclosure and enforcement against the property or maker are concerned, is the same as an unforeclosed mortgage and cannot, in a court of law, claim money which is in court for distribution. General Fin. & Thrift Corp. v. Bank of Wrightsville, 92 Ga. App. 808, 90 S.E.2d 93 (1955).

Rights of assignee of retention-of-title contract. — While bank by the assignment of the retention-of-title contract is subrogated to all the rights of the original holder thereof, it does not by reason of such assignment gain any right which the original holder did not have; since the original holder did not have the right to claim the proceeds of funds brought into court under a money rule unless such holder's contract was foreclosed, the bank has no more right to claim the proceeds on such unforeclosed instrument than the original holder had. General Fin. & Thrift Corp. v. Bank of Wrightsville, 92 Ga. App. 808, 90 S.E.2d 93 (1955).

Bank's unforeclosed conditional sale contract invalid. — Though a bank's conditional sale contract is a lien of higher dignity than a finance company's bill of sale, the conditional sale contract is eliminated from the contest for the money in the hands of the sheriff when it has not been foreclosed. General Fin. & Thrift Corp. v. Bank of Wrightsville, 92 Ga. App. 808, 90 S.E.2d 93 (1955).

Unforeclosed mortgage as basis for claim. — Unforeclosed mortgage cannot be basis of a claim for money on a rule to distribute, unless it is shown that the holder of the mortgage would otherwise be remediless. General Fin. & Thrift Corp. v. Bank of Wrightsville, 92 Ga. App. 808, 90 S.E.2d 93 (1955).

Proceeds paid to vendors retaining note title. — Although a note cannot be foreclosed by affidavit like a chattel mortgage, on a rule to distribute money equitable principles are applied and, under the facts of this case, there was no error in ordering the proceeds of the sale to be paid to vendors who retained title by note against judgment creditors. Browder, Manget & Co. v. Blake & Madden, 135 Ga. 71, 68 S.E. 837 (1910).

Proceeds of sale applied to third person's debt. — If title to property sold as the property of the defendant in attachment is in a third person by reason of that person having reserved the property in writing as security for the purchase money, that third person may waive the right to follow the property and to recover the property from the purchaser at the sale, and in that event can, on money rule, have the proceeds of the sale applied upon the person's debt; and this is true even though the person gave public notice on the day of the sale that whoever bought would buy subject to that title. Wright, Williams & Wadley v. Brown, 7 Ga. App. 389, 66 S.E. 1034 (1910); J.A. Thrash & Co. v. Harman, 21 Ga. App. 98, 94 S.E. 54 (1917).

No right to excess funds generated by tax sale. — Trial court did not err in granting a tax commissioner summary judgment in a lienholder's action under O.C.G.A. § 15-13-3 to recover excess funds from a tax sale because at the time of the tax sale, at the time the tax commissioner notified the record owner of the property and record lienholders of the

excess tax sale funds, and at the time the tax commissioner paid the excess tax sale funds to the record owner of the property, the lienholder had no recorded lien or interest in the property; after the tax commissioner fulfilled the obligation under O.C.G.A. § 48-4-5(a) to give notice to the record property owner and lienholders, the property owner submitted the only claim to the tax commissioner for the excess tax sale funds, and the lienholder failed to show that more was required of the tax commissioner before the funds were disbursed. Brina Bay Holdings, LLC v. Echols, 314 Ga. App. 242, 723 S.E.2d 533 (2012).

Laborer's lien superior to mortgage. — If after the foreclosure of a mortgage and the levy of the execution issues thereon, a laborer's general lien is foreclosed and execution duly issued thereon and placed in the hands of the levying officer for the purpose of claiming the fund arising from the sale of the property under the mortgage execution, the laborer's lien should be first satisfied, although the execution issued upon the lien foreclosure has never been levied upon the property. Mathews v. Fields, 12 Ga. App. 225, 77 S.E. 11 (1913).

Common law fieri facias inferior to mortgage. — If property is sold by virtue of certain common law fieri facias, the liens of which are inferior in dignity to an older recorded mortgage, which has been duly foreclosed and the mortgage fieri facias placed in the hands of the levying officer prior to the sale, such officer would be subject to rule by the owner of the superior mortgage fieri facias upon the money so raised being paid out to satisfy the liens of the inferior judgment fieri facias, notwithstanding the fact that the officer may have held up the fund for a period of six months subsequent to the sale, and paid it out to the owners of the inferior liens prior to the bringing of any rule or other proceeding claiming the fund by virtue of the older lien. Kennedy v. Bank of Collins, 21 Ga. App. 461, 94 S.E. 628 (1917).

Distress warrant effective as lien. — Although a distress warrant cannot be levied upon property which has already been seized under judicial process, such a distress warrant may be placed in the hands of the levying officer and, upon a rule to distribute the fund, may assert its lien. Mulherin v. Porter, 1 Ga. App. 153, 58 S.E. 60 (1907).

Practice and Procedure

Interested parties may waive notice provided for the parties benefit, and come into court and by appropriate pleadings set forth the ground of the parties claim to the fund. Paris v. Citizens Banking Co., 106 Ga. 206, 32 S.E. 141 (1898).

To assert title or lien, evidence thereof must be introduced; and if an intervenor in a money rule proceeding has failed to produce any evidence of title or lien to the property from the sale of which the fund in the officer's hands was raised, there is no issue before the court as to the priority of such title or lien, and it is not error to award the fund to other intervenors who have produced evidence of their liens. Denny v. C.L. Fain Co., 84 Ga. App. 477, 66 S.E.2d 260 (1951).

Bill of exceptions. — Motion to dismiss a bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50) was denied after the fund for distribution was raised by the levy of the execution of the plaintiff in error, and the rule and notice thereof served by the sheriff on the plaintiff in error made the plaintiff a party. Thomasville Live Stock Co. v. Burney, 19 Ga. App. 703, 91 S.E. 1062 (1917).

Sale by alleged transferee may be restrained. — If an alleged transferee of an execution is seeking to have the property levied on and sold, contrary to the wishes of the real transferee, a rule to distribute the funds arising from the sale of the property as provided by statute is not such an adequate remedy at law as will preclude the real transferee from obtaining an injunction to restrain the sheriff and such claimant from selling the property of the execution debtor against the wishes and to the injury of the owner of the process. Colter v. Livingston, 154 Ga. 401, 114 S.E. 430 (1922).

Admissions of original movant admissible after transfer. — If money rule was brought against a sheriff and, while it was pending, the movant transferred to another the mortgage fi. fa. under which

Practice and Procedure (Cont'd)

the property had been sold, and such transferee, by order of court, was substituted as the movant, admissions made by the original movant prior to the transfer, when offered in evidence on the hearing of the rule by contestants for the fund, were not subject to objection on the ground that the original movant's admissions could not affect the transferee and that the original movant should be sworn as a witness. Continental Fertilizer Co. v. J.F. Madden & Sons, 140 Ga. 39, 78 S.E. 460 (1913).

Single judgment despite separate payments to creditors. — If the judge before whom a money rule proceeding was tried refused to stay the proceeding and make the rule absolute as to both judgment creditors, and instead entered two separate orders requiring the clerk to pay each judgment creditor out of the funds, the money rule proceeding was not two separate and distinct cases and the two orders were not two such separate and distinct judgments. Shouse v. Gober, 46 Ga. App. 231, 167 S.E. 316 (1933).

Lien holders not bound if notice lacking. — If the other claimants to the fund who were not notified in writing by the sheriff or the movant of the pendency of the rule so that they would "be bound by the judgment of distribution," did not waive service, and did not participate in the trial of the case, the holders of a tax lien were not bound by the judgment awarding the funds. Riley v. Bank of Jersey, 43 Ga. App. 836, 160 S.E. 540 (1931).

Appeal from magistrate's judgment to superior court. — From the judgment of a magistrate on a rule to require a constable to show cause at a regular term of court why the constable should not pay over to a lien creditor funds in the constable's hands, arising from the sale of personal property by virtue of a mortgage execution, when another creditor intervenes and claims the fund by virtue of a lien alleged to be superior, an appeal to a jury in the superior court will lie, if the amount involved exceeds $50.00, regardless of whether the questions for determination are of law or fact, except in cases where the effect of the magistrate's ruling is to dismiss the case and thus leave no case for appeal. Crawford County Bank v. Britt-Hightower Co., 17 Ga. App. 804, 88 S.E. 691 (1916).

15-13-14. Punishment for improper return or failure to pay over money received.

If any sheriff or other officer fails to make a proper return of all writs, executions, and other processes put into his hands or fails to pay over all moneys received on such executions on his being required to do so by the court, he shall be liable for contempt and may be fined, imprisoned, or removed from office in the manner prescribed by the Constitution and laws of this state. (Laws 1799, Cobb's 1851 Digest, p. 577; Code 1863, § 3861; Code 1868, § 3881; Code 1873, § 3957; Code 1882, § 3957; Civil Code 1895, § 4779; Civil Code 1910, § 5351; Code 1933, § 24-213.)

JUDICIAL DECISIONS

Cited in Ivester v. Mozeley, 89 Ga. App. 578, 80 S.E.2d 197 (1954).

RESEARCH REFERENCES

ALR. — Preventing, obstructing, or delaying service or execution of search warrant as contempt, 39 ALR 1354.

What amounts to false return of execution or attachment; justification of alleged false return, 157 ALR 194.

Use of affidavits to establish contempt, 79 ALR2d 657.

Oral court order implementing prior written order or decree as independent basis of charge of contempt within contempt proceedings based on violation of written order, 100 ALR3d 889.

ARTICLE 2

FEES

JUDICIAL DECISIONS

Article inapplicable to court clerk taking excessive fees. — Statutes imposing penalties must be given a strict construction, and, under such a construction, it is obvious that the statutes do not impose a penalty on the clerk of the municipal court for taking or demanding "any greater fee than the law allows," or for an overcharge of costs. Caldwell v. Chambers, 61 Ga. App. 156, 6 S.E.2d 120 (1939).

15-13-30. Fees not generally charged to state; exceptions.

None of the fees which clerks of the superior courts, sheriffs, deputy sheriffs, bailiffs, magistrates, or constables are entitled to charge and collect for the performance of their official duties shall be charged to the state for failure to collect from the person charged unless it has been otherwise expressly declared by law or unless the nature of the fees is such that they must necessarily be so paid by the state. (Orig. Code 1863, § 3629; Code 1868, § 3654; Code 1873, § 3705; Code 1882, § 3705; Civil Code 1895, § 5408; Civil Code 1910, § 6007; Code 1933, § 24-301; Ga. L. 1983, p. 884, § 4-1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "bailiffs" was substituted for "baliffs" in this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Sheriff may deduct fees for all fieri facias from one sum collected. — Sheriff making collection under one income tax fieri facias and making a return of nulla bona under other tax fieri facias is entitled to deduct the sheriff's fees for all of such fieri facias from the sum collected by the sheriff under one or more of such fieri facias. 1952-53 Op. Att'y Gen. p. 206.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 11, 14. 20 Am. Jur. 2d, Costs, §§ 1, 63.

15-13-31. Receipt for fees to be given; penalty.

Every public official mentioned in Code Section 15-13-30, his deputy, or his agent shall, when required, give a statement of the fees demanded and a receipt for the same to any person paying any lawful or pretended fees of office, on pain of forfeiting $10.00 for every such neglect or refusal, to be demanded in court within 12 months and recovered by the person paying the fees and making the demand. (Laws 1792, Cobb's 1851 Digest, p. 356; Code 1863, § 3630; Code 1868, § 3655; Code 1873, § 3706; Code 1882, § 3706; Civil Code 1895, § 5409; Civil Code 1910, § 6008; Code 1933, § 24-302.)

15-13-32. Penalty for excessive fees.

If a public official mentioned in Code Section 15-13-30 takes or demands any greater fee than the law allows or a fee for services not performed, he shall forfeit $50.00, to be demanded in court and recovered as prescribed in Code Section 15-13-31. (Laws 1792, Cobb's 1851 Digest, p. 356; Code 1863, § 3631; Code 1868, § 3656; Code 1873, § 3707; Code 1882, § 3707; Civil Code 1895, § 5410; Civil Code 1910, § 6009; Code 1933, § 24-303.)

JUDICIAL DECISIONS

Cited in Munday v. Munday, 152 Ga. App. 232, 262 S.E.2d 543 (1979).

15-13-33. Table of fees to be kept.

(a) Every public official shall constantly keep and have posted in a conspicuous place in his or her office, the place where the business thereof is conducted, or in an electronic format accessible to the public a table of fees for his or her office stated in fair words and figures.

(b) Every public official who keeps in a conspicuous place in his office or the place where he usually executes the business thereof a copy of this Code shall be held and construed to have complied with the requirements of this Code section. (Laws 1792, Cobb's 1851 Digest, p. 357; Code 1863, § 3632; Code 1868, § 3657; Ga. L. 1870, p. 68, § 1; Code 1873, § 3708; Code 1882, § 3708; Civil Code 1895, § 5411; Civil Code 1910, § 6010; Code 1933, § 24-304; Ga. L. 2012, p. 173, § 1-29/HB 665.)

15-13-34. Treble costs against plaintiffs.

When an action based on Code Sections 15-13-30 through 15-13-33 is brought against a public official and a judgment is rendered in favor of

the official, the person who brought the action shall pay three times the ordinary costs. (Laws 1792, Cobb's 1851 Digest, p. 357; Code 1863, § 3633; Code 1868, § 3658; Code 1873, § 3709; Code 1882, § 3709; Civil Code 1895, § 5412; Civil Code 1910, § 6011; Code 1933, § 24-305.)

15-13-35. Demanding excessive costs; penalty.

Except as otherwise provided by law, any officer of court who knowingly demands, as costs from a defendant in a criminal case, fees to which such officer is not entitled and any prosecuting attorney who demands or receives any fee or costs on any criminal case which has not been tried by a trial jury or otherwise finally disposed of shall be guilty of a misdemeanor. (Laws 1850, Cobb's 1851 Digest, p. 864; Ga. L. 1861, p. 69, § 1; Code 1863, § 4590; Code 1868, § 4611; Code 1873, § 4707; Code 1882, § 4707; Penal Code 1895, § 301; Penal Code 1910, § 305; Code 1933, § 24-9903; Ga. L. 2000, p. 1115, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 15-13-35 is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

15-13-36. Restrictions on charging prosecuting attorneys fees for certified copies of records.

No clerk of any superior court or state court shall charge any fee for providing any certified copy of any record or portion thereof requested by a prosecuting attorney in this state for use in any criminal case. (Code 1981, § 15-13-36, enacted by Ga. L. 1996, p. 748, § 1A; Ga. L. 2012, p. 173, § 1-30/HB 665.)

Code Commission notes. — Both Ga. L. 1996, p. 747 and Ga. L. 1996, p. 748 enacted a Code Section 15-1-13. Pursuant to Code Section 28-9-5, in 1996, Code Section 15-1-13 as enacted by Ga. L. 1996, p. 748, was redesignated as Code Section 15-13-36.

CHAPTER 14

COURT REPORTERS

Article 1

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ARTICLE 1

GENERAL PROVISIONS

15-14-1. Power of superior court judges to appoint and remove; oath; duties.

The judges of the superior courts shall have power to appoint and, at their pleasure, to remove a court reporter, as defined in Article 2 of this

chapter, for the courts of their respective circuits. The court reporter, before entering on the duties of the court reporter's office, shall be duly sworn in open court to perform faithfully all the duties required of the court reporter by law. It shall be the court reporter's duty to attend all courts in the circuit for which such court reporter is appointed and, when directed by the judge, to record exactly and truly or take stenographic notes of the testimony and proceedings in the case tried, except the arguments of counsel. (Ga. L. 1876, p. 133, § 1; Code 1882, § 4696(a); Penal Code 1895, § 810; Penal Code 1910, § 810; Code 1933, § 24-3101; Ga. L. 1993, p. 1315, § 6.)

JUDICIAL DECISIONS

Denial of request to use unofficial reporter not unconstitutional. — Appellant was not deprived of appellant's constitutional rights to a fair trial though appellant was denied appellant's request to use an unofficial court reporter at appellant's expense. Estep v. State, 129 Ga. App. 909, 201 S.E.2d 809 (1973).

Reporter bound to obey judge of superior court as employer. — Court reporter is, as to all of the reporter's official duties defined by statute, bound to obey the judge of the superior court, and is certainly, as to those duties, an employee of the judge. Johnson v. United States Fid. & Guar. Co., 93 Ga. App. 336, 91 S.E.2d 779 (1956).

Report of another case, duly authenticated by stenographer, is admissible to prove testimony of witness. Burnett v. State, 87 Ga. 622, 13 S.E. 552 (1891).

It is duty of reporter to read disputed testimony to jury when directed by judge. Green v. State, 122 Ga. 169, 50 S.E. 53 (1905).

Expense in private action not assessable against public treasury. — Court could not assess costs against the public treasury in a civil case between private parties the expense of requiring the notes of the official stenographer to be written out for the benefit of the judge. Macris v. Tsipourses, 35 Ga. App. 671, 134 S.E. 621 (1926).

Order of judge to compensate official stenographer becomes judgment by court of competent jurisdiction and, not being void on its face, cannot be collaterally attacked. Walden v. Nichols, 204 Ga. 532, 50 S.E.2d 105 (1948).

Private reporter may refuse to furnish transcript to opposing party. — If plaintiff agrees with reporter that the reporter should take notes on the testimony given on the trial of the case and that plaintiff alone will be responsible for the fees to be paid for such service, in which agreement the defendant expressly refuses to participate, and if the trial court makes no order respecting the reporting of the case, the defendant cannot compel the reporter to transcribe the reporter's stenographic notes even though the defendant offers to pay the entire cost of reporting the case and the cost of transcribing the case, and it is not error to refuse to order the reporter to furnish the defendant with a transcript of the evidence. Harrington v. Harrington, 224 Ga. 305, 161 S.E.2d 862 (1968).

If in a judicial hearing in connection with a civil action the court reporter transcribes testimony, not by direction of the court but by private agreement with one party in which the opposing party has expressly refused to participate, all costs of transcription having been paid by the former, the opposing party cannot thereafter compel the reporter to furnish that party with a copy of the transcript; evidentiary questions for which such a transcript is necessary on appeal cannot be decided by the Court of Appeals. Nixdorf Enters., Inc. v. Bell, 127 Ga. App. 617, 194 S.E.2d 486 (1972).

Cited in Heard v. State, 210 Ga. 108, 78 S.E.2d 38 (1953); Giddings v. Starks, 240 Ga. 496, 241 S.E.2d 208 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Same qualified person may be reporter and secretary. — Judge of superior court has authority to appoint reporter for the court and to employ secretary for the judge's office; there is nothing in the laws of Georgia which would prohibit the judge from appointing the same person to fill these two positions, provided that the person so appointed had the qualifications necessary for each position. 1974 Op. Att'y Gen. No. U74-1.

Court reporter may not work for two courts. — Court reporter may not hold simultaneous employment with the State Board of Workers' Compensation and a superior court or state court, but the reporter may provide court reporting services to those courts provided the reporter's role is that of an independent contractor. 1983 Op. Att'y Gen. No. 83-56.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 1 et seq.

C.J.S. — 21 C.J.S., Courts, § 136.

15-14-2. Power of city court judges to appoint; compensation.

(a) The judges of the city courts of this state having concurrent jurisdiction with the superior courts of this state to try misdemeanor cases and to try civil cases where the amount involved exceeds $500.00, where not otherwise specifically provided for by law, may appoint an official court reporter, as defined in Article 2 of this chapter, whose compensation for reporting criminal and civil cases and for attendance upon court shall be the same as provided by the Judicial Council pursuant to Code Section 15-5-21. The court reporter reporting and transcribing civil cases shall be paid by the party or parties requesting the reporting or transcribing.

(b) This Code section shall not apply to the city courts of this state where provision has been made by law prior to February 13, 1950, for the appointment of the official reporters of city courts. (Ga. L. 1950, p. 149, §§ 1-3; Ga. L. 1993, p. 1315, § 6.)

15-14-3. Power of division judges to appoint and remove; oath; duties.

Each of the judges of the superior and city courts in all circuits where there may be more than one division, whether the same is civil or criminal, shall appoint and at such judge's pleasure remove a court reporter, as defined in Article 2 of this chapter, for such judge's respective division. The court reporter, before entering on the duties of the court reporter's office, shall be duly sworn in open court to perform faithfully all the duties required. It shall be the court reporter's duty to attend all sessions of the court for which such court reporter is appointed and, when directed by the judge, to record exactly and truly

or take stenographic notes of the testimony and proceedings in the case tried, except the argument of counsel. (Ga. L. 1876, p. 133, § 1; Code 1882, § 4696a; Ga. L. 1894, p. 53, § 1; Civil Code 1895, § 4446; Civil Code 1910, § 4984; Ga. L. 1914, p. 59, § 1; Code 1933, § 24-3102; Ga. L. 1993, p. 1315, § 6.)

JUDICIAL DECISIONS

No mandate that every civil case be reported. — It is not incumbent upon the trial judge to arrange for the official reporter to take down the evidence at an interlocutory hearing or a subsequent contempt hearing; the law does not mandate that every civil case be reported. Savage v. Savage, 234 Ga. 853, 218 S.E.2d 568 (1975).

Court must make reporter available when defendant requests recordation. — When a defendant in a misdemeanor case asks that the case be recorded at the defendant's expense, the court must make sure that the court reporter is available to comply with the request. Thompson v. State, 240 Ga. 296, 240 S.E.2d 87 (1977).

Defendant in misdemeanor case is not required to make advance arrangements for court reporter if the defendant desires the trial to be recorded. Thompson v. State, 240 Ga. 296, 240 S.E.2d 87 (1977).

Reporter must attend court sessions. — "Long established practice" cannot relieve court reporter of statutory duty to attend court sessions. Thompson v. State, 240 Ga. 296, 240 S.E.2d 87 (1977).

Error to overrule motion for continuance if court reporter unavailable. — It is error to overrule a motion for continuance if the request for a court reporter was made one day in advance but none was available on the day of the trial. Massey v. State, 127 Ga. App. 638, 194 S.E.2d 582 (1972).

Cited in Giddings v. Starks, 240 Ga. 496, 241 S.E.2d 208 (1978).

15-14-4. Additional court reporters; typists; equipment.

(a) In all judicial circuits of this state in which nine or more superior court judges are provided by law, the judges of such circuits shall have the power to appoint, in addition to those court reporters already authorized by law, such additional court reporters as each judge deems necessary or proper to report and transcribe the proceedings of the court over which he presides, such court reporters to have the same qualifications and to be paid in the same manner as is provided by law.

(b) In addition thereto, each of the judges of such circuits shall have the power, with the approval of the county commissioners, to employ such typists as he may deem necessary or proper to aid in the recording or transcribing of the proceedings of the court; the compensation of the typists is declared to be an expense of court and payable out of the county treasury as such.

(c) In the aforesaid circuits each of the judges shall have the power to purchase such recording machines and equipment as he may deem necessary or proper to aid in the transaction of the business of the court and to order payment therefor out of the county treasury as an expense of court. (Ga. L. 1957, p. 373, § 1.)

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 136.

15-14-5. Duty to transcribe; certificate.

It shall be the duty of each court reporter to transcribe the evidence and other proceedings of which he has taken notes as provided by law whenever requested so to do by counsel for any party to such case and upon being paid the legal fees for such transcripts. The reporter, upon delivering the transcript to such counsel, shall affix thereto a certificate signed by him reciting that the transcript is true, complete, and correct. Subject only to the right of the trial judge to change or require the correction of the transcript, the transcript so certified shall be presumed to be true, complete, and correct. (Ga. L. 1957, p. 224, § 9.)

Cross references. — Further provisions regarding reporting, preparation, and disposition of transcripts of evidence and proceedings, § 5-6-41.

JUDICIAL DECISIONS

Burden is on defendant to arrange for a transcription and to pay for the transcript. Wigley v. State, 194 Ga. App. 7, 389 S.E.2d 769, cert. denied, 194 Ga. App. 913, 389 S.E.2d 769 (1989).

Certification meant complete and accurate representation of oath. — Since the trial transcript was certified pursuant to O.C.G.A. § 15-14-5, the court must presume that the garbled version of the voir dire oath contained in the transcript truly, completely, and correctly represented the oath actually given by the trial court. However, even if the court presumes that trial counsel was ineffective for failing to object to the improper oath, the defendants failed to show the defendants were prejudiced by such ineffectiveness. Hargett v. State, 285 Ga. 82, 674 S.E.2d 261 (2009).

Presumption of correctness may be rebutted. — By participating in the state's attempt to supplement the record during a hearing on a motion for new trial, a defendant acquiesced in the state's presentation of the state's theory that the trial court's admonition to the defendant of the right to testify was missing from the record, and it was not necessary that the state file a written motion under O.C.G.A. § 5-6-41(f) to supplement the record. State v. Nejad, 286 Ga. 695, 690 S.E.2d 846 (2010).

Duty of defense counsel. — It is the duty of defense counsel to note and except to any trial errors and to pursue a full transcription thereof if desired. Defense counsel's lack of diligence cannot be delegated as reversible error on the part of the trial court or court reporter on appeal. Cagle v. State, 160 Ga. App. 803, 287 S.E.2d 660 (1982).

Section inapplicable when reporter not paid. — This section is not applicable if the record does not disclose that appellant paid or offered to pay the court reporter the legal fees for a transcript of the evidence. Hair v. Chilton, 223 Ga. 632, 157 S.E.2d 290 (1967).

Private reporter may refuse to furnish transcript to opposing party. — If plaintiff agrees with the reporter that the reporter should take notes on the testimony given on the trial of the case and that plaintiff alone will be responsible for the fees to be paid for such service in which agreement the defendant expressly refuses to participate, and if the trial court makes no order respecting the reporting of the case, the defendant cannot compel the reporter to transcribe the reporter's stenographic notes even though

the defendant offers to pay the entire cost of reporting the case and the cost of transcribing the case, and it is not error to refuse to order the reporter to furnish the defendant with a transcript of the evidence. Harrington v. Harrington, 224 Ga. 305, 161 S.E.2d 862 (1968).

Duties of official court reporter are set by law, not by private contract; no private agreement between the reporter and one party can prejudice the right of the other party to have a transcript of the proceedings prepared. Giddings v. Starks, 240 Ga. 496, 241 S.E.2d 208 (1978).

Must rule at start when one party refuses to share costs. — If one party in a court proceeding declines to share in the expenses of a trial transcript, the other party, in order to preclude the first from later requesting a copy of the transcript, must invoke a ruling of the trial judge at the beginning of the trial which states that the party's opponent has expressly refused to participate in the costs of reporting. Giddings v. Starks, 240 Ga. 496, 241 S.E.2d 208 (1978).

Trial court erred in a civil suit by denying an appealing plaintiff's motions for a trial transcript and for a new trial based on not having a transcript because a pretrial order did not qualify as an express ruling that the plaintiff expressly refused to pay for the costs of the transcript. Further, the pretrial order did not qualify as a ruling invoked at the commencement of the proceedings. Moore v. Ctr. Court Sports & Fitness, LLC, 289 Ga. App. 596, 657 S.E.2d 548 (2008), cert. denied, 2008 Ga. LEXIS 463 (Ga. 2008).

New reporter to be appointed when another incapable of transcribing. — If the defendant shows that the court reporter appointed by the trial court is incapable of transcribing the tapes of a felony trial, another court reporter should be appointed. Wilson v. State, 246 Ga. 672, 273 S.E.2d 9 (1980).

If defendant satisfactorily shows that, due to reporter's hearing disability, the corrected transcript is not true, complete, and correct, the trial court errs in not granting a motion to have another court reporter transcribe the tapes. Wilson v. State, 246 Ga. 672, 273 S.E.2d 9 (1980).

If correctness of record is called into question, matter is to be resolved by trial court. Ross v. State, 245 Ga. 173, 263 S.E.2d 913 (1980).

No error in favoring transcript. — Trial court did not err in denying a wife's request that the court reporter's audiotapes be replayed in her presence to establish the accuracy of the certified transcript of the wife's remarks against her recollection thereof because the wife did not show error in the trial court's failure to adopt the wife's recollected version of what transpired during the hearing in favor of the court reporter's certified transcript. Willis v. Willis, 288 Ga. 577, 707 S.E.2d 344 (2010).

Certification of transcript met requirements. — Trial court did not abuse the court's discretion in ruling that the certified transcript of the hearing on a manufacturer's motion for summary judgment, which was presided over by the same judge who made the ruling, accurately depicted what had occurred because the certification of the transcript met the requirements of O.C.G.A. § 15-14-5. Udoinyion v. Michelin N. Am., Inc., 313 Ga. App. 248, 721 S.E.2d 190 (2011).

Exclusion of court reporter's audio recording of plea hearing. — Trial court did not abuse its discretion in excluding the court reporter's audio recording of the plea hearing because the defendant did not attempt to supplement the transcript using the proper procedures; the trial court did not err in considering the audio recording to be irrelevant as the court well recalled the hearing and the persons affected during the hearing; and, while the defendant contended that the emotion that was exhibited during the hearing was due to being pressured to plead guilty, the defendant did not suggest that the recording of the hearing contained any characteristic that revealed the reason for the emotions displayed, and thus failed to show why the true, complete, and correct record of the plea hearing needed to be supplemented. DeToma v. State, 296 Ga. 90, 765 S.E.2d 596 (2014).

Cited in Estep v. State, 129 Ga. App. 909, 201 S.E.2d 809 (1973); Reed v. State, 130 Ga. App. 659, 204 S.E.2d 335 (1974).

OPINIONS OF THE ATTORNEY GENERAL

If reporter dies before completing transcript, another reporter may make the transcript and certify the transcript; such a transcript would be subject to the judge's power of correction. 1973 Op. Att'y Gen. No. U73-107.

RESEARCH REFERENCES

C.J.S. — 77 C.J.S., Reports, § 6 et seq.
ALR. — Right to have reporter's notes read to jury, 50 ALR2d 176.

Court reporter's death or disability prior to transcribing notes as grounds for reversal or new trial, 57 ALR4th 1049.

15-14-6. Contingent expense and travel allowance; notification of appointments and removals.

(a) The Council of Superior Court Judges of Georgia is authorized and directed to pay from the state treasury the sums specified in subsection (b) of this Code section as contingent expense and travel allowance to each duly appointed reporter for the superior courts in all judicial circuits of this state, such sum being in addition to the compensation of the superior court reporters provided by law.

(b) The amounts payable per month under this Code section to superior court reporters as contingent expense and travel allowance shall be as follows:

(1) For reporters of judicial circuits consisting of only one county	$ 80.00
(2) For reporters of judicial circuits consisting of two counties	140.00
(3) For reporters of judicial circuits consisting of three counties	200.00
(4) For reporters of judicial circuits consisting of four counties	260.00
(5) For reporters of judicial circuits consisting of five counties	320.00
(6) For reporters of judicial circuits consisting of six or more counties	380.00

Any person who is a duly appointed reporter for the superior courts in more than one judicial circuit shall receive only one contingent expense and travel allowance, in the amount provided for the circuit consisting of the largest number of counties in which he or she is so appointed.

(c) The contingent expense and travel allowance provided by this Code section shall be paid from the appropriations made by the General Assembly for the cost of operating the superior courts. The duly appointed reporters are declared to be officers of the superior courts.

(d) Annually during the month of January the judge or chief judge of each judicial circuit shall certify to The Council of Superior Court Judges of Georgia the names and addresses of all persons duly appointed as reporters for the superior courts in the judicial circuit and shall thereafter notify the council of the removal of such persons from office or the appointment of additional persons as superior court reporters, together with the effective date of such removal or appointment.

(e) All laws enacted before April 5, 1961, applicable to any circuit or counties of this state and governing the compensation of court reporters therein shall remain in full force and effect. (Ga. L. 1961, p. 354, §§ 1-5; Ga. L. 1962, p. 60, § 1; Ga. L. 1971, p. 417, § 1; Ga. L. 1981, p. 619, § 1; Ga. L. 1993, p. 1402, § 10; Ga. L. 2008, p. 577, § 6/SB 396.)

JUDICIAL DECISIONS

Cited in State, Dep't of Admin. Servs. v. Pritchett, 160 Ga. App. 294, 287 S.E.2d 290 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Compensation of state court reporters. — Because a state court serves a single county, state court reporters are to receive the amount prescribed by paragraph (b)(1) of O.C.G.A. § 15-14-6 for reporters of judicial circuits consisting of one county only. 1981 Op. Att'y Gen. No. U81-24.

15-14-7. Destruction of notes; how authorized; petition; grounds; notice; order.

(a) Upon petition, the judge of a superior court, city court, or any other court, the judgments of which are subject to review by the Supreme Court or the Court of Appeals, may authorize destruction of a court reporter's notes taken of the evidence and other proceedings in civil actions in that court, subject to this Code section.

(b) The court reporter or other person in whose custody the notes are kept shall file a written petition in the court in which the trial was conducted requesting an order authorizing destruction of notes taken during the trial. The petition shall specify the name of the court reporter, the name of the person in whose custody the notes are kept if other than the court reporter, the place at which the notes are kept, and the names and addresses of the parties to the action or, if the address

of a party is unknown, the name and address of counsel to that party if such is known.

(c) The petition shall certify one of the following:

(1) That the action is a civil action in which no notice of appeal has been filed, that the court reporter has not been requested or ordered to transcribe the evidence and other proceedings, and that a period of not less than 37 months has elapsed since the last date upon which a notice of appeal in the action could have been filed; or

(2) That the action is one in which the court reporter has been requested or ordered pursuant to law to transcribe the evidence and other proceedings, that the record has been transcribed, and that a period of not less than 12 months has elapsed from the date upon which the remittitur from the appeal has been docketed in the trial court.

(d) When a petition for the destruction of notes is filed pursuant to this Code section, the court shall cause due notice of the petition and the grounds therefor to be given to each party to the action or, if the address of a party is unknown, to the counsel to the party if such is known.

(e) Not less than 30 days after receipt of a petition pursuant to this Code section, the court shall authorize destruction of the specified notes unless such destruction, in the court's judgment, would impair the cause of justice or fairness in the action. (Ga. L. 1974, p. 410, §§ 1-4.)

ARTICLE 2

TRAINING AND CERTIFICATION

OPINIONS OF THE ATTORNEY GENERAL

Fees collected by board not required to be deposited in state treasury. — Legislative characterization of court reporters as officers of the court indicates that the fees collected by the Board of Court Reporting of the Judicial Council are not required to be deposited in the state treasury. 1977 Op. Att'y Gen. No. U77-55.

Fees unexpended at end of fiscal year not subject to appropriation lapse. — Since fees collected by Board of Court Reporting of the Judicial Council are not placed in the state treasury and are therefore not subject to the annual appropriations process in the same manner as funds drawn from the state treasury, nor are the fees referred to in the General Appropriations Act for fiscal year 1977 or 1978, those fees which are unexpended at the end of the fiscal year are not subject to appropriation lapse. 1978 Op. Att'y Gen. No. 78-68.

15-14-20. Short title.

This article shall be known and may be cited as "The Georgia Court Reporting Act." (Ga. L. 1974, p. 345, § 1; Ga. L. 1993, p. 1315, § 7.)

15-14-21. Purpose.

It is declared by the General Assembly that the practice of court reporting carries important responsibilities in connection with the administration of justice, both in and out of the courts; that court reporters are officers of the courts; and that the right to define and regulate the practice of court reporting belongs naturally and logically to the judicial branch of the state government. Therefore, in recognition of these principles, the purpose of this article is to act in aid of the judiciary so as to ensure minimum proficiency in the practice of court reporting by recognizing and conferring jurisdiction upon the Judicial Council of Georgia to define and regulate the practice of court reporting. (Ga. L. 1974, p. 345, § 2; Ga. L. 1993, p. 1315, § 7.)

JUDICIAL DECISIONS

Judicial Council of Georgia and Board of Court Reporting were part of the judiciary and therefore excluded from coverage. — Judicial Council of Georgia and the Board of Court Reporting of the Judicial Council of Georgia fell within "the judiciary," as that term was used in O.C.G.A. § 50-13-2(1) of the Administrative Procedure Act, and therefore were exempt from the coverage of the Act and immune from a suit challenging a court reporter ethics rule the board adopted. Judicial Council v. Brown & Gallo, LLC, 288 Ga. 294, 702 S.E.2d 894 (2010).

15-14-22. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Court Reporting of the Judicial Council.

(2) "Certified court reporter" means any person certified under this article to practice verbatim reporting.

(3) "Court reporter" means any person who is engaged in the practice of court reporting as a profession as defined in this article. The term "court reporter" shall include not only those who actually report judicial proceedings in courts but also those who make verbatim records as defined in paragraph (4) of this Code section.

(4) "Court reporting" means the making of a verbatim record by means of manual shorthand, machine shorthand, closed microphone voice dictation silencer, or by other means of personal verbatim reporting of any testimony given under oath before, or for submission to, any court, referee, or court examiner or any board, commission, or

other body created by statute, or by the Constitution of this state or in any other proceeding where a verbatim record is required. The taking of a deposition is the making of a verbatim record as defined in this article. (Ga. L. 1974, p. 345, § 4; Ga. L. 1993, p. 1315, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

Regulating verbatim court reporting in federal judicial system within state. — With the exception of official federal court reporters, the Board of Court Reporting of the Judicial Council of Georgia has authority to regulate the practice of verbatim court reporting for use in the federal courts within the State of Georgia pursuant to O.C.G.A. §§ 15-14-22 and 15-14-28. 1986 Op. Att'y Gen. No. 86-27.

15-14-23. Judicial Council of Georgia as agency of judiciary for purposes of article.

The Judicial Council of Georgia, as created by Article 2 of Chapter 5 of this title, is declared to be an agency of the judicial branch of the state government for the purpose of defining and regulating the practice of court reporting in this state. (Ga. L. 1974, p. 345, § 3; Ga. L. 1993, p. 1315, § 7.)

JUDICIAL DECISIONS

Judicial Council of Georgia and Board of Court Reporting were part of the judiciary and therefore excluded from coverage. — Judicial Council of Georgia and the Board of Court Reporting of the Judicial Council of Georgia fell within "the judiciary," as that term was used in O.C.G.A. § 50-13-2(1) of the Administrative Procedure Act, and therefore were exempt from the coverage of the Act and immune from a suit challenging a court reporter ethics rule the board adopted. Judicial Council v. Brown & Gallo, LLC, 288 Ga. 294, 702 S.E.2d 894 (2010).

15-14-24. Board of Court Reporting of Judicial Council; creation; composition; term; vacancies; removal.

(a) There is established a board which shall be known and designated as the "Board of Court Reporting of the Judicial Council." It shall be composed of nine members, five members to be certified court reporters, two members to be representatives from the State Bar of Georgia, and two members to be from the judiciary, one to be a superior court judge and one to be a state court judge, each of whom shall have not less than five years' experience in their respective professions. The board shall be appointed by the Judicial Council. The term of office shall be two years, and the Judicial Council shall fill vacancies on the board.

(b) Any member of the board may be removed by the Judicial Council after a hearing at which the Judicial Council determines that there is cause for removal. (Ga. L. 1974, p. 345, § 5; Ga. L. 1993, p. 1315, § 7; Ga. L. 1999, p. 868, § 1.)

15-14-25. Oath of office; filing; certificate of appointment.

Immediately and before entering upon the duties of their office, the members of the board shall take the oath of office and shall file the same in the office of the Judicial Council. Upon receiving the oath of office, the Judicial Council shall issue to each member a certificate of appointment. (Ga. L. 1974, p. 345, § 6; Ga. L. 1993, p. 1315, § 7.)

15-14-26. Chairperson; election; term; rules and regulations.

The board shall each year elect from its members a chairperson, whose term shall be for one year, and who shall serve during the period for which elected and until a successor shall be elected. The board shall make all necessary rules and regulations to carry out this article, but the rules and regulations shall be subject to review by the Judicial Council. (Ga. L. 1974, p. 345, § 7; Ga. L. 1993, p. 1315, § 7.)

JUDICIAL DECISIONS

Judicial Council of Georgia and Board of Court Reporting were part of the judiciary and therefore excluded from coverage. — Judicial Council of Georgia and the Board of Court Reporting of the Judicial Council of Georgia fell within "the judiciary," as that term was used in O.C.G.A. § 50-13-2(1) of the Administrative Procedure Act, and therefore were exempt from the coverage of the Act and immune from a suit challenging a court reporter ethics rule the board adopted. Judicial Council v. Brown & Gallo, LLC, 288 Ga. 294, 702 S.E.2d 894 (2010).

15-14-27. Administrative work as duty of Administrative Office of the Courts; director to serve as secretary of board.

The administrative and staff work of the board shall be among the duties of the Administrative Office of the Courts created by Code Section 15-5-22. The director of the Administrative Office of the Courts or a designee shall serve as secretary of the board and shall perform all duties which may be assigned by either the board or the Judicial Council to implement this article. (Ga. L. 1974, p. 345, § 18; Ga. L. 1993, p. 1315, § 7.)

15-14-28. Certificate required.

No person shall engage in the practice of verbatim court reporting in this state unless the person is the holder of a certificate as a certified court reporter or is the holder of a temporary permit issued under this article. (Ga. L. 1974, p. 345, § 12; Ga. L. 1993, p. 1315, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

Regulating verbatim court reporting in federal judicial system within state. — With the exception of official federal court reporters, the Board of Court Reporting of the Judicial Council of Georgia has authority to regulate the practice of verbatim court reporting for use in the federal courts within the State of Georgia pursuant to O.C.G.A. §§ 15-14-22 and 15-14-28. 1986 Op. Att'y Gen. No. 86-27.

15-14-29. Qualifications for certification; individuals with disabilities.

(a) Upon receipt of appropriate application and fees, the board shall grant a certificate as a certified court reporter to any person who:

(1) Has attained the age of 18 years;

(2) Is of good moral character;

(3) Is a graduate of a high school or has had an equivalent education; and

(4) Has, except as provided in subsection (b) of this Code section, successfully passed an examination in verbatim court reporting as prescribed in Code Section 15-14-30.

(b) Any person who has attained the age of 18 years and is of good moral character, who submits to the board an affidavit under oath that the court reporter was actively and continuously, for one year preceding March 20, 1974, principally engaged as a court reporter, shall be exempt from taking an examination and shall be granted a certificate as a certified court reporter.

(c)(1) Reasonable accommodation shall be provided to any qualified individual with a disability who applies to take the examination who meets the essential eligibility requirements for the examination and provides acceptable documentation of a disability, unless the provision of such accommodation would impose an undue hardship on the board.

(2) Reasonable accommodation shall be provided to any qualified individual with a disability who applies for certification who meets the essential eligibility requirements for certification and provides acceptable documentation of a disability, unless the provision of such accommodation would impose an undue hardship on the board or the certification of the individual would pose a direct threat to the health, welfare, or safety of residents of this state.

(3) The term "disability," as used in paragraphs (1) and (2) of this subsection, means a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an

impairment. (Ga. L. 1974, p. 345, §§ 9, 11; Ga. L. 1992, p. 6, § 15; Ga. L. 1993, p. 1315, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 15-14-29 cannot be constitutionally applied so as to prohibit an individual who is not a citizen from being certified as a court reporter since the citizenship requirements do not meet the test in Cabell v. Chavez-Salido, 454 U.S. 432 (1982) for determining whether a restriction fits within the narrow "political function" exception to the general rule that discrimination based on alienage triggers strict scrutiny. 1992 Op. Att'y Gen. No. 92-23.

15-14-30. Application for testing; fee; time of examinations; conduct and grading.

Every person desiring to commence the practice of court reporting in this state shall file an application for testing with the board upon such form as shall be adopted and prescribed by the board. At the time of making an application the applicant shall deposit with the board an examination fee to be determined by the board. Examinations shall be conducted as often as may be necessary, as determined by the board, provided that examinations must be conducted at least once annually. Applicants shall be notified by mail of the holding of such examinations no later than ten days before the date upon which the examinations are to be given. Examinations shall be conducted and graded according to rules and regulations prescribed by the board. (Ga. L. 1974, p. 345, § 10; Ga. L. 1993, p. 1315, § 7.)

15-14-31. Renewal of certificate; fee; automatic revocation of suspended certificate.

Every certified court reporter who continues in the active practice of verbatim court reporting shall annually renew the certificate on or before April 1 following the date of issuance of the certificate under which the court reporter is then entitled to practice, upon the payment of a fee established by the board. Every certificate which has not been renewed on April 1 shall expire on that date of that year and shall result in the suspension of the court reporter's right to practice under this article, which suspension shall not be terminated until all delinquent fees have been paid or the court reporter has requalified by testing. After a period to be determined by the board, a suspended certificate will be automatically revoked and may not be reinstated without meeting current certification requirements. (Ga. L. 1974, p. 345, § 17; Ga. L. 1993, p. 1315, § 7.)

15-14-32. Use of title or abbreviation.

Any person who has received from the board a certificate as provided for in this article shall be known and styled as a certified court reporter

and shall be authorized to practice as such in this state and to use such title or the abbreviation "C.C.R." in so doing. No other person, firm, or corporation, all of the members of which have not received such certificate, shall assume the title of certified court reporter, the abbreviation "C.C.R.," or any other words or abbreviations tending to indicate that the person, firm, or corporation so using the same is a certified court reporter. (Ga. L. 1974, p. 345, § 8; Ga. L. 1993, p. 1315, § 7.)

15-14-33. Refusing or revoking certificate or temporary permit or discipline of person; disciplinary actions; appeal; reinstatement; immunity for reporting; voluntary surrender or failure to renew; regulation.

(a) The board shall have the authority to refuse to grant a certificate or temporary permit to an applicant therefor or to revoke the certificate or temporary permit of a person or to discipline a person, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a certificate or temporary permit contained in this article or under the rules or regulations of the board. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that all the requirements for the issuance of a certificate or temporary permit have been met, and, if the board is not satisfied as to the applicant's qualifications, it may deny a certificate or temporary permit without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if desired;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of court reporting or on any document connected therewith; practiced fraud or deceit or intentionally made any false statements in obtaining a certificate or temporary permit to practice court reporting; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony or any crime involving moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had a certificate or temporary permit to practice as a court reporter revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against the licensee or the applicant by any such lawful licensing authority other than the board; or was denied a certificate by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a certificate or temporary permit by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice as a court reporter, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of court reporting but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of court reporting;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose certificate or temporary permit has been suspended or revoked by the board to practice as a court reporter or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of court reporting, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule, or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or certificate or temporary permit reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state. Any such adjudication shall automatically suspend the certificate or temporary permit of any such person and shall prevent the reissuance or renewal of any certificate or temporary permit so suspended for as long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice as a court reporter with reasonable skill or has become unable to practice as a court reporter with reasonable skill by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material;

(11) Violated the provisions of subsection (c) or (d) of Code Section 9-11-28; or

(12) Violated the provisions of Code Section 15-14-37.

(b) For purposes of this Code section, the board may obtain through subpoena upon reasonable grounds any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(c) When the board finds that any person is unqualified to be granted a certificate or temporary permit or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to court reporting, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a certificate or temporary permit to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any certificate or temporary permit for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any certificate or temporary permit as the board deems necessary for the protection of the public;

(5) Revoke any certificate or temporary permit;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose a requirement to pass the state certification test; or

(8) Require monetary adjustment in a fee dispute involving an official court reporter.

(d) In addition to and in conjunction with the actions described in subsection (c) of this Code section, the board may make a finding

adverse to the licensee or applicant but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(e) Any disciplinary action of the board may be appealed by the aggrieved person to the Judicial Council, which shall have the power to review the determination by the board. Initial judicial review of the final decision of the Judicial Council shall be had solely in the superior courts of the county of domicile of the board.

(f) In its discretion, the board may reinstate a certificate or temporary permit which has been revoked or issue a certificate or temporary permit which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or any other laws relating to court reporting.

(g)(1) The board is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations the board may deem necessary or proper for the enforcement of the provisions of this Code section and the laws relating to court reporting. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The board or its appointed representative may issue subpoenas to compel access to any writing, document, or other material upon a determination that reasonable grounds exist for the belief that a violation of this Code section or any other law relating to the practice of court reporting may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board and the records of such investigations shall be kept for the board by the Administrative Office of the Courts, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in the capacity as licensee shall be admissible at any hearing held to determine whether a violation of this article has taken place, regardless of any statutory privilege; provided, however, that any documen-

tary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(h) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a court reporter or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a court reporter shall be immune from civil and criminal liability for so testifying.

(i) If any licensee or applicant after at least 30 days' notice fails to appear at any hearing, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the director of the Administrative Office of the Courts shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the director of the Administrative Office of the Courts shall be deemed to be service upon the licensee or applicant.

(j) The voluntary surrender of a certificate or temporary permit or the failure to renew a certificate or temporary permit by the end of an established penalty period shall have the same effect as a revocation of said certificate or temporary permit, subject to reinstatement in the discretion of the board. The board may restore and reissue a certificate or temporary permit to practice under the law relating to that board and, as a condition thereof, may impose any disciplinary sanction provided by this Code section or the law relating to that board.

(k) Regulation by the board shall not exempt court reporting from regulation pursuant to any other applicable law. (Ga. L. 1974, p. 345, § 13; Ga. L. 1993, p. 1315, § 7; Ga. L. 1994, p. 1007, § 2; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (i) is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 58 (1994).

OPINIONS OF THE ATTORNEY GENERAL

Contracts for reporting depositions. — Exclusive contract for reporting depositions between a court reporter and a party may not be impermissible on its face provided it does not infringe on the court reporter's legal duties, but if the terms of the contract and surrounding circumstances render the court reporter an employee of the party or attorney or create a financial interest in the action on the part of the court reporter, the court reporter cannot report the deposition unless all parties waive the disqualification in writing. 1993 Op. Att'y Gen. No. 93-18.

Discounts to contracting party. — If a contract for reporting depositions provides a discount to the contract party, then charging the other party a higher fee for the transcript could be deemed an "unreasonable" fee, and therefore subject the court reporter to discipline by the Board of Court Reporting. 1993 Op. Att'y Gen. No. 93-18.

If a court reporter provides kickbacks to parties or their attorneys in return for hiring that court reporter to report a deposition, such actions constitute unprofessional conduct. 1993 Op. Att'y Gen. No. 93-18.

15-14-34. Temporary permits.

Temporary employment of any person may be possible by obtaining a temporary permit from the board or from a judge in compliance with the rules and regulations of the Board of Court Reporting of the Judicial Council. The scope of the activities of the temporary permit holder shall be as provided in the rules of the board. (Ga. L. 1974, p. 345, § 16; Ga. L. 1980, p. 528, § 1; Ga. L. 1993, p. 1315, § 7.)

15-14-35. Injunction against violations; remedy cumulative.

On the verified complaint of any person or by motion of the board that any person, firm, or corporation has violated any provision of this article, the board, with the consent of the Judicial Council, may file a complaint seeking equitable relief in its own name in the superior court of any county in this state having jurisdiction of the parties, alleging the facts and praying for a temporary restraining order and temporary injunction or permanent injunction against such person, firm, or corporation, restraining them from violating this article. Upon proof thereof, the court shall issue the restraining order, temporary injunction, or permanent injunction without requiring allegation or proof that

the board has no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other remedy which the board has and shall be in addition to any right of criminal prosecution provided by law. (Ga. L. 1974, p. 345, § 15; Ga. L. 1993, p. 1315, § 7.)

15-14-36. Penalties for violations.

Any person who:

(1) Represents himself or herself as having received a certificate or temporary permit as provided for in this article or practices as a certified court reporter, without having received a certificate or temporary permit;

(2) Continues to practice as a court reporter in this state or uses any title or abbreviation indicating he or she is a certified court reporter, after his or her certificate has been revoked; or

(3) Violates any provision of this article or of subsection (c) or (d) of Code Section 9-11-28

shall be guilty of a misdemeanor. Each day of the offense is a separate misdemeanor. (Ga. L. 1974, p. 345, § 14; Ga. L. 1993, p. 1315, § 7; Ga. L. 1994, p. 1007, § 3; Ga. L. 1999, p. 81, § 15.)

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 58 (1994).

15-14-37. Prohibition against certain contracts for court reporting services; applicability; registration; rules and regulations; fines.

(a) Contracts for court reporting services not related to a particular case or reporting incident between a certified court reporter or any person with whom a certified court reporter has a principal and agency relationship and any attorney at law, party to an action, party having a financial interest in an action, or agent for an attorney at law, party to an action, or party having a financial interest in an action are prohibited. Attorneys shall not be prohibited from negotiating or bidding reasonable fees for services on a case-by-case basis.

(b) In order to comply with subsection (a) of this Code section, each certified court reporter shall make inquiry regarding the nature of the contract for his or her services directed to the employer or the person or entity engaging said court reporter's services as an independent contractor.

(c) This Code section shall not apply to contracts for court reporting services for the courts, agencies, or instrumentalities of the United States or of the State of Georgia.

(d) A court reporting firm doing business in Georgia shall register with the board by completing an application in the form adopted by the board and paying fees as required by the board.

(e) Each court reporting firm doing business in Georgia shall renew its registration annually on or before April 1 following the date of initial registration, by payment of a fee set by the board.

(f) Court reporting firms doing business in Georgia are governed by this article. The board shall have authority to promulgate rules and regulations not inconsistent with this article for the conduct of court reporting firms.

(g) The board is authorized to assess a reasonable fine, not to exceed $5,000.00, against any court reporting firm which violates any provision of this article or rules and regulations promulgated in accordance with this Code section. (Code 1981, § 15-14-37, enacted by Ga. L. 1994, p. 1007, § 4; Ga. L. 1999, p. 848, § 2.)

Law reviews. — For note on the 1994 enactment of this Code section, see 11 Ga. St. U.L. Rev. 58 (1994).

CHAPTER 15

CHILD SUPPORT RECEIVERS

Sec.
15-15-1. "Child support" defined.
15-15-2. Office of Receiver of Child Support; establishment; appointment of receiver; term; removal; additional employees.
15-15-3. Receiver's oath of office and bond; employees' bonds.
15-15-4. Duties of child support receiver.
15-15-4.1. Contempt action by child support receiver when payments not made in accordance with order.
15-15-5. Fees and costs; disposition; records.
15-15-6. Salaries.
15-15-7. Office space; expenses.

Cross references. — Child support generally, §§ 19-6-1 et seq., 19-11-1 et seq.

15-15-1. "Child support" defined.

As used in this chapter, the term "child support" includes all payments for the maintenance and education of dependent minor children which a court of competent jurisdiction has ordered to be paid pursuant to any temporary or final order of support, including payments ordered in actions for separate maintenance, and all payments ordered by a judge to be made in any domestic relations case, including cases of divorce. (Code 1933, § 24-2702a, enacted by Ga. L. 1979, p. 1400, § 1.)

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 19 Am. Jur. Pleading and Practice Forms, Parent and Child, § 44 et seq.

ALR. — Validity, construction, and application of Child Support Recovery Act of 1992 (18 USCA § 228), 147 ALR Fed. 1.

15-15-2. Office of Receiver of Child Support; establishment; appointment of receiver; term; removal; additional employees.

(a) The governing authority of each county within this state is authorized by appropriate resolution to establish an Office of the Receiver of Child Support and to establish the position of child support receiver in accordance with this chapter.

(b) Upon the establishment of the Office of the Receiver of Child Support, the governing authority of the county shall appoint, for a term of two years and until his successor is appointed and qualified, a child support receiver who shall be the director of the Office of the Receiver of Child Support.

(c) Where there is not a sufficient caseload to justify a full-time child support receiver in each county, the governing authorities of the counties comprising the judicial circuit may appoint a single individual to serve as child support receiver for all or part of the judicial circuit.

(d) The child support receiver shall be subject to removal by the governing authority of the county for failure to carry out the orders of the court or for neglect of any duty imposed by the court. The child support receiver shall not engage in the private practice of law.

(e) The Office of the Receiver of Child Support shall be a local agency of the judicial branch of government within that circuit and the child support receiver shall be an officer of the superior court.

(f) The governing authority of the county may appoint such additional employees as it may deem necessary. (Code 1933, §§ 24-2701a, 24-2702a, enacted by Ga. L. 1979, p. 1400, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

District attorney's office may not act as a child support receiver or collect the fee contemplated by O.C.G.A. § 15-15-5. 1983 Op. Att'y Gen. No. U83-67.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Guardian and Ward, § 56 et seq.
C.J.S. — 39 C.J.S., Guardian and Ward, § 7 et seq. 67A C.J.S., Parent and Child, § 49.

15-15-3. Receiver's oath of office and bond; employees' bonds.

The child support receiver shall take the oath of office prescribed by Code Section 45-3-1 and shall execute bond with good security in the same amount as is prescribed by law for the clerk of the superior court of such county. The child support receiver shall require that any employee of the office shall likewise execute a bond with good security. (Code 1933, § 24-2706a, enacted by Ga. L. 1979, p. 1400, § 1.)

Cross references. — Official bonds generally, § 45-4-1 et seq.

15-15-4. Duties of child support receiver.

It shall be the duty of the child support receiver to:

(1) Collect all child support payments and such other payments of support as are established by judicial order or by a written agreement of a parent or guardian to furnish support to his minor child, the

terms of which specify that support payments are to be paid through the child support receiver;

(2) Act as trustee for remittance to the person or other party entitled to receive payment for child support;

(3) Maintain adequate books and records for all payments received and disbursed by the child support receiver in such a manner as to easily determine the type of action in which the payments were ordered, showing the amount of the obligation fixed by the court and the amount of payments credited to each account;

(4) Notify within 15 days the person entitled to support of any account which is 30 days past due except:

(A) When a case has been designated as a public assistance case, the delinquent amount and a copy of the payment records of that account shall be promptly referred and forwarded to the district attorney's office or the state agency responsible for the enforcement of collection of such delinquent payments;

(B) In cases in which actions have been filed under Article 2 or Article 3 of Chapter 11 of Title 19, the child support receiver shall promptly notify the district attorney and forward a copy of the payment records and the amount of arrears to the district attorney;

(C) In cases in which a court has ordered that child support payments be paid through the child support receiver as a condition of probation or a suspended sentence, the child support receiver shall promptly notify the probation office of such court and shall forward a copy of the payment records and the amount of arrears to the prosecuting attorney; or

(D) In cases which are based upon a written agreement in which a person has agreed to provide support of a minor child, the child support receiver shall promptly notify the party designated in the agreement;

(5) Prepare an annual budget for the Office of the Receiver of Child Support and, after the budget has been approved by the judge or judges of the county or circuit, submit the same to the county or counties affected for their approval; the budget shall be prepared in the form and manner prescribed by the county governing authorities; and

(6) File a complete financial report of all payments received and all payments disbursed under Article 1 of Chapter 11 of Title 19 by the Office of the Receiver of Child Support with the county department of family and children services. The report shall include the names and addresses of all payors and all payees as well as the amounts paid.

The report shall be made on a quarterly basis. (Code 1933, § 24-2702a, enacted by Ga. L. 1979, p. 1400, § 1; Ga. L. 1997, p. 1613, § 3.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 121 (1997).

15-15-4.1. Contempt action by child support receiver when payments not made in accordance with order.

Whenever any person required to furnish support to a minor by payments through a child support receiver and whenever such payments are not made in accordance with the judicial order or written agreement, the child support receiver shall be authorized to bring an action for contempt against the person required to make such payments. Any such action shall be brought pursuant to Code Section 19-6-4 and shall be brought in the court which originally ordered the payment of child support. (Code 1933, § 24-2702a.1, enacted by Ga. L. 1982, p. 1204, § 2; Code 1981, § 15-15-4.1, enacted by Ga. L. 1982, p. 1204, § 4.)

15-15-5. Fees and costs; disposition; records.

(a) The child support receiver shall be authorized to charge the paying party an additional 5 percent of the amount of each payment, not to exceed $2.00 per payment. In the event of arrearage, the above fee shall be assessed as if the payments had been paid individually when due. The collected fees shall be deposited in the general fund of the county. Records of all such fees shall be maintained in accordance with this chapter.

(b) In addition to any amounts charged pursuant to subsection (a) of this Code section, the child support receiver shall be required to assess and collect from the paying party all costs of court and service fees of the sheriff in any action initiated by the state. Such costs and fees shall be collected from the paying party with the first child support payment collected. Where a paying party is not financially capable of paying such costs and fees in a single payment, such individuals shall pay a $5.00 installment payment toward such costs and fees with each child support payment until all such court costs and sheriff's fees are paid in full. Said costs, including the sheriff's service fees, shall be paid to the clerk of the superior court who, after making the reports and payments otherwise required by general law, shall pay the remainder into the general fund of the county. All paying parties who have been determined to be indigent by the court shall be exempt from the assessment and collection of court costs and sheriff's service fees until the paying party is no longer found to be indigent.

(c) Nothing in this Code section shall allow or require any reduction of child support payments paid to any parent or guardian of a minor child. (Code 1933, § 24-2703a, enacted by Ga. L. 1979, p. 1400, § 1; Ga. L. 1980, p. 755, § 1; Ga. L. 1992, p. 2516, § 1.)

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 234 (1992).

OPINIONS OF THE ATTORNEY GENERAL

District attorney's office may not act as a child support receiver or collect the fee contemplated by O.C.G.A. § 15-15-5. 1983 Op. Att'y Gen. No. U83-67.

Recoupment of program costs by payment deduction not authorized. — O.C.G.A. § 15-15-5 does not authorize a superior court to require in the court's orders to pay child support pursuant to the Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq., that a fee be deducted from each payment and paid into the county treasury in order to recoup the costs of the program. 1983 Op. Att'y Gen. No. U83-67.

Superior court clerk is not entitled to charge a fee in connection with the handling of child support monies. 1989 Op. Att'y Gen. No. U89-2.

15-15-6. Salaries.

The chief judge, with the approval of the governing authority of the county or counties affected, shall fix the salary of the child support receiver and any other employees of such office, to be paid from the treasury of the county or counties. (Code 1933, § 24-2704a, enacted by Ga. L. 1979, p. 1400, § 1.)

RESEARCH REFERENCES

C.J.S. — 39 C.J.S., Guardian and Ward, §§ 35, 36, 165.

15-15-7. Office space; expenses.

(a) The child support receiver shall maintain an office within the county courthouse or within other suitable office space provided by the county or counties.

(b) It shall be the responsibility of the governing authority of the county or counties to budget for all expenses, including rent, utilities, telephone expenses, materials, and supplies, for the Office of the Receiver of Child Support. (Code 1933, § 24-2705a, enacted by Ga. L. 1979, p. 1400, § 1.)

CHAPTER 16

SHERIFFS

Article 1

General Provisions

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Article 3

Sheriff Offices' Nomenclature

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15-16-58. Damages recoverable for unauthorized use of symbols.
15-16-59. Violation a felony; penalty.

Cross references. — Powers and duties of sheriffs with regard to county jails, § 42-4-1 et seq.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Peace Officer Standards and Training Council, Chapter 464-1.

JUDICIAL DECISIONS

Liability of counties for acts of sheriffs. — Because Georgia counties and sheriffs appear inextricably intertwined, the acts of the sheriff are therefore the acts of the county for purposes of liability under 42 U.S.C. § 1983. Hamilton ex rel. Hamilton v. Cannon, 864 F. Supp. 1332 (M.D. Ga. 1994), rev'd on other grounds, 80 F.3d 1525 (11th Cir. 1996).

Cited in In re Irvin, 171 Ga. App. 794, 321 S.E.2d 119 (1984).

ARTICLE 1

GENERAL PROVISIONS

15-16-1. Qualification requirements for sheriff; exemptions.

(a) **Intent.** The General Assembly declares it to be in the best interests of the citizens of this state that qualifications and standards for the office of sheriff be determined and set so as to improve both the capabilities and training of those persons who hold the office of sheriff. With the increase of crime continuing as a major social problem in this state and with the understanding that the sheriff is the basic law enforcement officer of the several counties of this state, it is declared to be the intent of the General Assembly that proper qualifications and standards be required of the person holding the office of sheriff so as to increase the effectiveness and capabilities of the several sheriffs of this state as law enforcement officers to combat crime.

(b) **General requirements.** Except as otherwise provided in this Code section, sheriffs are elected, qualified, commissioned, hold their offices for the same term, and are subject to the same disabilities as the clerks of the superior courts.

(c) **Qualifications.**

(1) No person shall be eligible to hold the office of sheriff unless such person:

(A) At the time of qualifying as a candidate for the office of sheriff is a citizen of the United States;

(B) Has been a resident of the county in which he or she seeks the office of sheriff for at least two years immediately preceding the date of qualifying for election to the office;

(C) At the time of qualifying as a candidate for the office of sheriff is a registered voter;

(D) At the time of qualifying as a candidate for the office of sheriff has attained the age of at least 25 years;

(E) At the time of qualifying as a candidate for the office of sheriff has obtained a high school diploma or its recognized equivalent in educational training as established by the Georgia Peace Officer Standards and Training Council;

(F) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States; provided, however, that a plea of nolo contendere to a felony offense or any offense involving moral turpitude contrary to the laws of this state shall have the same effect as a plea of guilty, thereby disqualifying such a person from holding the office of sheriff;

(G) Is fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record, which fingerprints are to be taken under the direction of the judge of the probate court of the county in which such person is qualifying and must be taken on or before, but no later than, the close of business on the third business day following the close of such qualification period. If the search of such fingerprint files results in the discovery of any criminal record that reveals that the person has been convicted, or the record shows no disposition of the record, of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States, the probate judge shall notify the election superintendent of such record immediately;

(H) At the time of qualifying as a candidate for the office of sheriff, files with the officer before whom such person is qualifying a complete written history of his or her places of residence for a period of six years immediately preceding his or her qualification date, giving the house number or RFD number, street, city, county, and state;

(I) At the time of qualifying as a candidate for the office of sheriff, files with the officer before whom such person is qualifying a complete written history of his or her places of employment for a period of six years immediately preceding his or her qualification date, giving the period of time employed and the name and address of his or her employer; and

(J) Is a registered peace officer as provided in Code Section 35-8-10 or is a certified peace officer as defined in Chapter 8 of Title 35. Any person who is not a registered or certified peace officer at the time such person assumes the office of sheriff shall be required to complete satisfactorily the requirements for certification as a

peace officer as provided in Chapter 8 of Title 35 within six months after such person takes office; provided, however, that an extension of the time to complete such requirements may be granted by the Georgia Peace Officer Standards and Training Council upon the presentation of evidence by a sheriff that he or she was unable to complete the basic training course and certification requirements due to illness, injury, military service, or other reasons deemed sufficient by such council. The Georgia Peace Officer Standards and Training Council shall make every effort to ensure that space is available for newly elected sheriffs who are not certified or registered peace officers to attend the course as soon as possible after such persons take office. Such council shall notify the appropriate judge of the probate court whenever a newly elected sheriff who is not certified fails to become certified as a peace officer pursuant to the requirements of this subparagraph.

(2) Each person offering his or her candidacy for the office of sheriff shall at the time such person qualifies, swear or affirm before the officer before whom such person has qualified to seek the office of sheriff that he or she meets all of the qualifications required by this subsection, except as otherwise provided in subparagraph (J) of paragraph (1) of this subsection, and that he or she has complied or will comply with the requirements of subparagraph (G) of paragraph (1) of this subsection no later than the close of business on the third business day following the close of such qualification period.

(3) Each person offering his or her candidacy for the office of sheriff shall file an affidavit with the election superintendent of the county by the close of business on the third business day following the close of the qualification period stating:

(A) That such person is a high school graduate or has obtained the recognized equivalent in education training as established by the Georgia Peace Officer Standards and Training Council; and

(B) When and from what school such person graduated from high school or obtained such recognized equivalent in education training.

In addition, such person shall also file a certified copy of his or her birth certificate with the election superintendent of the county.

(4) Each person offering to run for the office of sheriff and who is otherwise qualified shall be allowed, six months prior to qualifying and at his or her own expense, to attend the basic mandate course for peace officers. The Georgia Peace Officer Standards and Training Council shall work to ensure that space is available for such individuals to attend the course.

(d) **Exemption.** The requirements of subparagraphs (c)(1)(D), (c)(1)(E), (c)(1)(F), (c)(1)(H), (c)(1)(I), and (c)(1)(J) of this Code section

shall be deemed to have been met by any person who is currently serving as a duly qualified and elected sheriff of one of the several counties of this state. (Laws 1799, Cobb's 1851 Digest, p. 198; Code 1863, § 320; Code 1868, § 381; Code 1873, § 345; Code 1882, § 345; Civil Code 1895, § 4368; Civil Code 1910, § 4902; Code 1933, § 24-2801; Ga. L. 1977, p. 1171, § 1; Ga. L. 1978, p. 244, § 1; Ga. L. 1981, p. 1334, §§ 1, 2; Ga. L. 1982, p. 3, § 15; Ga. L. 1984, p. 579, § 1; Ga. L. 1984, p. 1369, § 1; Ga. L. 1986, p. 606, § 1; Ga. L. 1989, p. 1091, § 3; Ga. L. 1990, p. 8, § 15; Ga. L. 1992, p. 2112, § 1; Ga. L. 1993, p. 724, §§ 1, 2; Ga. L. 1994, p. 521, § 1; Ga. L. 1997, p. 952, § 1; Ga. L. 1998, p. 224, § 1; Ga. L. 2013, p. 648, § 1/HB 139.)

The 2013 amendment, effective July 1, 2013, in subparagraph (c)(1)(G), substituted "of the county in which such person is qualifying and must be taken on or before, but no later than, the close of business on the third business day following the close of such qualification period" for "and must be taken on or before, but no later than, the close of qualification for election to the office of sheriff" and added the second sentence; near the beginning of subparagraph (c)(1)(H), substituted ", files with the officer before whom such person is qualifying" for "gives"; near the beginning of subparagraph (c)(1)(I), substituted ", files with the officer before whom such person is qualifying" for "gives"; near the beginning of paragraph (c)(2), deleted ", within 60 days prior to or" following "sheriff shall" and deleted subparagraph (c)(2)(A), which read: "File with the officer before whom such person has qualified to seek the office of sheriff a certified copy of his or her birth certificate and a certified copy of his or her high school diploma or certified proof of its recognized equivalent in education training as established by the Georgia Peace Officer Standards and Training Council; and"; deleted the subparagraph (c)(2)(B) designation, inserted "or will comply" near the end, and substituted "the close of business on the third business day following the close of such qualification period" for "the close of qualification for election to the office of sheriff"; added paragraph (c)(3); and redesignated former paragraph (c)(3) as paragraph (c)(4).

Cross references. — County officers, Ga. Const. 1983, Art. IX, Sec. I, Para. III. Clerks of superior courts generally, § 15-6-50 et seq.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Peace Officer Standards and Training Council, Chapter 464-1.

Criminal Justice Information Exchange and Dissemination, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Crime Information Center Council, Practice and Procedure, Rule 140-2-.04.

JUDICIAL DECISIONS

Subparagraph (c)(1)(E) of O.C.G.A. § 15-16-1 is not violative of the equal protection clause of the constitution. Goforth v. Poythress, 638 F.2d 27 (5th Cir. 1981).

Basic law enforcement office of counties. — It was the intent of the General Assembly that the office of sheriff be the basic law enforcement office of the counties of this state. Veit v. State, 182 Ga. App. 753, 357 S.E.2d 113 (1987).

Deadlines applicable to person seeking nomination by primary election. — Deadlines stated in subparagraph (c)(1)(G) and paragraph (c)(2) of this section are applicable to a person seeking by primary election that person's party's nomination as candidate for office of county sheriff. Grogan v. Paulding County Democratic Executive Comm., 246 Ga. 206, 269 S.E.2d 467 (1980).

Statute uses word "election" gener-

ically, which includes primary. Grogan v. Paulding County Democratic Executive Comm., 246 Ga. 206, 269 S.E.2d 467 (1980).

Convicted felon prohibited from running for office of sheriff. — It was the intent of the General Assembly to prohibit a convicted felon from running for the office of sheriff even though such person might obtain a pardon for the felony. Barbour v. Democratic Executive Comm., 246 Ga. 193, 269 S.E.2d 433 (1980).

Duties and powers of sheriff by common law and statute. — Office of sheriff carries with it all of its common law duties and powers, except as modified by statute, and statutes in derogation of the common law must be strictly construed. Warren v. Walton, 231 Ga. 495, 202 S.E.2d 405 (1973).

Sheriffs not restricted in right to employ. — Both under the rule of common law and the statute law in force in this state, sheriffs are not restricted in their right to employ and discharge their deputies and employees, and any limitation or restriction which now applies to only one sheriff in this state must be strictly construed, and no powers or rights will be given to the reviewing or limiting authority except those definitely and positively granted by the General Assembly. Warren v. Walton, 231 Ga. 495, 202 S.E.2d 405 (1973).

Sheriff's database maintenance procedures. — County had no 42 U.S.C. § 1983 liability for the sheriff's law enforcement policies and conduct regarding warrant information on database systems or the training and supervision of the sheriff's employees in that regard; under Georgia law, the sheriff's function was to enforce laws and keep the peace on behalf of the state. Grech v. Clayton County, 335 F.3d 1326 (11th Cir. 2003).

Cited in Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003).

OPINIONS OF THE ATTORNEY GENERAL

Authority to enact qualifications for sheriffs. — General Assembly was authorized by Ga. Const. 1976, Art. IX, Sec. I, Para. IX (see now Ga. Const. 1983, Art. IX, Sec. I, Para. III) to enact qualifications for sheriffs in excess of those which apply to other offices. 1980 Op. Att'y Gen. No. 80-56.

Sheriff may not act as attorney. — Sheriff by reason of sheriff's position as court officer is precluded from acting as attorney. 1948-49 Op. Att'y Gen. p. 627.

Deputy sheriff is prohibited from practicing law as a special prosecutor while remaining in the position of deputy sheriff. 1980 Op. Att'y Gen. No. U80-47.

O.C.G.A. § 15-16-1(c) is mandatory. — Use of the words "No person shall be eligible" clearly make the statutory provisions mandatory and not permissive because the word shall is given the construction as a word of command. 1980 Op. Att'y Gen. No. 80-83.

Persons to whom mandatory language of subsection (c) applies. — Words of command in subsection (c) of this section apply only prospectively to sheriffs who seek election or are elected after the effective date of the statute, and not retroactively to sheriffs who were duly qualified and elected prior to its effective date and whose term of office extends beyond the effective date of the statute. 1980 Op. Att'y Gen. No. 80-83.

"Residence" construed as "domicile." — Term "resident" as used in subparagraph (c)(1)(B) of O.C.G.A. § 15-16-1 means a person who is domiciled in the county. Similarly, the word "residence" as used in subparagraph (c)(1)(H) of § 15-16-1 should also be construed as "domicile." Therefore, if a candidate listed the candidate's domiciles for the six years immediately preceding the date of the candidate's qualifying for election, then the candidate should not be disqualified. 1988 Op. Att'y Gen. U88-34.

Two-year residency requirement. — For a person to be eligible to hold the office of sheriff the person must have been a resident of the county in which the person seeks the office for at least two years prior to the person qualifying for the election to that office. 1979 Op. Att'y Gen. No. 79-58.

Individual who has been convicted of a felony, completed that sentence, and

either received a pardon, or had the individual's rights restored, is not eligible to run for and hold the office of sheriff. 1980 Op. Att'y Gen. No. 80-56.

Person who has been convicted in federal court for the felony offense of federal income tax evasion upon a plea of nolo contendere is ineligible to run for the office of sheriff. 1980 Op. Att'y Gen. No. 80-96.

Disqualifying felony offense need not be defined as a felony under Georgia law. 1980 Op. Att'y Gen. No. 80-96.

Failure to comply with subsection (d) if otherwise qualified. — Person otherwise qualified to be sheriff is not disqualified from being elected to the office of sheriff by that person's failure to meet the qualifications set forth in subsection (d) of this section. However, in order to continue holding the office of sheriff after election, such a person would be required within the first six months in office to become a certified police officer as set forth in paragraph (d)(1) of this section. 1980 Op. Att'y Gen. No. 80-3.

Law enforcement experience need not be consecutive. — Two years' experience in the law enforcement field required by former paragraph (d)(3) of this section need not be served consecutively. 1980 Op. Att'y Gen. No. 80-41.

Providential cause. — Sheriff is unable to attend the required training session due to providential cause when that sheriff is prevented from attending the training session due to an accident against which ordinary skill and foresight could not guard. 1984 Op. Att'y Gen. No. U84-45.

Question of what constitutes or does not constitute "providential cause" in an individual case ultimately lies within the sound discretion of the council and must be decided on a case-by-case basis. 1984 Op. Att'y Gen. No. U84-45.

Serious illness or injury would suffice as "providential cause"; inconvenience would not. 1984 Op. Att'y Gen. No. U84-45.

Interim appointment. — To hold the office of sheriff, even for an interim period, an appointee must seek certified peace officer training or get a waiver. 1996 Op. Att'y Gen. No. 96-14.

Waiver of training requirement. — Georgia Peace Officer Standards and Training Council has no authority to waive the training requirement specified in subsection (e) of O.C.G.A. § 15-16-1. 1984 Op. Att'y Gen. No. U84-45.

Completion of training session. — Newly elected sheriff must successfully complete the required training session by receiving passing marks as established by council guidelines on the written performance examination. 1984 Op. Att'y Gen. No. U84-45.

Two-year exemption period. — If a newly elected sheriff has served in office for a total of two calendar years prior to the date the sheriff begins a first term, i.e., January 1 immediately following the general election, the sheriff is deemed to have met the training requirements. 1984 Op. Att'y Gen. No. U84-45.

Applicability of former subsection (g). — Former subsection (g) of this section applied equally to all duly qualified and elected persons who served in the office of sheriff of one of the several counties of the state for a period of two years, regardless of whether such service was performed, all or in part, prior to the effective date of this section. 1980 Op. Att'y Gen. No. 80-83.

Blindness not bar to otherwise qualified person. — Person otherwise possessing the qualifications to hold the office of sheriff may not be barred from such office because that person is blind. 1980 Op. Att'y Gen. No. U80-1.

Extension of period for meeting minimum training requirement. — Annual period specified in former subsection (f) of O.C.G.A. § 15-16-1 for compliance with the 20 hours' minimum training requirement cannot be extended by either the Georgia Peace Officer Standards and Training Council (see now O.C.G.A. § 35-8-3) or the Georgia Sheriffs' Association. 1982 Op. Att'y Gen. No. 82-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 3 et seq.

15-16-2. Certain sureties ineligible.

A surety for any tax collector or other holder of public money is ineligible for the office of sheriff until all moneys for which he is bound have been paid to the proper authority. (Laws 1814, Cobb's 1851 Digest, p. 1060; Code 1863, § 321; Code 1868, § 382; Code 1873, § 346; Code 1882, § 346; Civil Code 1895, § 4369; Civil Code 1910, § 4903; Code 1933, § 24-2802.)

RESEARCH REFERENCES

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 6.

15-16-3. Basic training course; compensation and costs.

(a) **Intent.** The General Assembly declares it to be the purpose of this Code section to promote the orderly transfer of the law enforcement power of the several counties of this state in connection with the expiration of the term of office of the sheriff and the taking of office of the newly elected sheriff. The interest of the State of Georgia requires that such transitions in the office of the sheriff be accomplished so as to assure continuity in the conduct of the peace-keeping functions of the several counties of this state. Any disruption occasioned by the transfer of the law enforcement power to a person not properly versed and trained in law enforcement and the operations of the office of sheriff is declared to be detrimental to the safety and well-being of the citizens of the several counties of this state and of the entire state. Accordingly, it is the intent of the General Assembly that appropriate training be required of sheriffs who are newly elected so as to avoid or minimize any disruption in the performance of the duties and responsibilities or the authority of the sheriffs of the several counties of this state. This training shall be generally devoted to contemporary law enforcement, investigation, judicial process, and correction practices and specifically shall be germane to the duties and operational functions of the office of sheriff in the several counties of this state. Further, the purpose of this Code section is to promote professionalism within the office of sheriff by ensuring the highest possible quality of law enforcement training is offered to each sheriff on an annual basis. Accordingly, it is the intent of the General Assembly that appropriate ongoing training be required of all sheriffs. This training shall be generally devoted to contemporary law enforcement, investigation, judicial process, and corrections practices and specifically shall be germane to the duties and operational functions of the office of sheriff in the several counties of this state.

(b) **Sheriffs-elect specialized training.** Any person elected to the office of sheriff in a county of this state who was not serving as a duly

elected or appointed sheriff on or before July 1, 1976, shall enroll in, attend, and successfully complete a course of sheriffs-elect specialized training and instruction established and provided by the Georgia Sheriffs' Association with the assistance of the Georgia Public Safety Training Center. Such course of instruction shall be held every four years at a time to be designated by the Georgia Sheriffs' Association. Any newly elected sheriff who is unable to attend such training course when it is offered because of medical disability or providential cause shall, within one year from the date such disability or cause terminates, complete a course of instruction as determined by the Georgia Sheriffs' Association and approved by the Georgia Peace Officer Standards and Training Council. Any newly elected sheriff who does not fulfill the obligations of this subsection shall lose his or her power of arrest.

(c) **Compensation.** A newly elected sheriff who enrolls in and attends a course of training and instruction as described in subsection (b) of this Code section shall be paid compensation for his or her attendance on a weekly basis at the successful completion of each week's training. The compensation shall be paid by the Georgia Sheriffs' Association using funds appropriated by the state for such purpose or from federal funds available for such purpose. The compensation shall be in an amount equal to a proportionate part of the annual salary to be received by the new sheriff of the least populated county in this state for each week spent in attendance at the course of training and instruction. For the purposes of this Code section, five days of training and instruction shall be considered one week.

(d) **Costs.** The cost of training, housing, travel, and meals appropriate to the course of training and instruction shall be paid by the Georgia Sheriffs' Association from state funds appropriated for such purpose or from federal funds available for such purpose.

(e) **Annual training.**

(1) From and after July 1, 1997, no person shall be eligible to hold the office of sheriff unless he or she attends a minimum of 20 hours' training annually as may be selected by the Georgia Sheriffs' Association.

(2) The basis for the minimum annual requirement of in-service training shall be the calendar year. Sheriffs who satisfactorily complete the sheriffs-elect specialized training in accordance with the provisions of this Code section after April 1 in any calendar year shall be excused from the minimum annual training requirement for the calendar year during which the sheriffs-elect specialized training course is completed.

(3) A waiver of the requirement of minimum annual in-service training may be granted by the Georgia Peace Officer Standards and

Training Council, in its discretion, upon the presentation of evidence by a sheriff that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(4) Any person who fails to complete the minimum annual in-service training required under this Code section and who has not received a waiver of such requirement pursuant to paragraph (3) of this subsection shall not perform any of the duties of sheriff involving the power of arrest until such training shall have been successfully completed. In addition, the Governor may suspend from office without pay for a period of 90 days any sheriff who fails to complete the minimum annual in-service training required under this Code section. The probate judge of the county of the sheriff's residence shall appoint a person who meets the qualifications for sheriff pursuant to this Code section to assume the duties and responsibilities of the office of sheriff during any such period of suspension. (Ga. L. 1976, p. 423, §§ 1, 2; Ga. L. 1982, p. 3, § 15; Ga. L. 1984, p. 22, § 15; Ga. L. 1997, p. 952, § 2.)

Cross references. — Certification of sheriffs under laws relating to certification of peace officers, § 35-8-2.

JUDICIAL DECISIONS

Cited in Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003).

RESEARCH REFERENCES

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 4 et seq.

15-16-4. Oath of office.

Before entering on the duties of their office the sheriffs shall take and subscribe, in addition to the oath required of all civil officers, the following oath before the judge of the superior court or the judge of the probate court:

"I do swear that I will faithfully execute all writs, warrants, precepts, and processes directed to me as sheriff of this county, or which are directed to all sheriffs of this state, or to any other sheriff specially, which I can lawfully execute, and true returns make, and in all things well and truly, without malice or partiality, perform the duties of the office of sheriff of _____ County, during my continuance therein, and take only my lawful fees. So help me God."

(Laws 1799, Cobb's 1851 Digest, p. 574; Laws 1803, Cobb's 1851 Digest, p. 199; Laws 1845, Cobb's 1851 Digest, p. 217; Code 1863, § 323; Code 1868, § 384; Code 1873, § 348; Code 1882, § 348; Civil Code 1895, § 4371; Civil Code 1910, § 4905; Code 1933, § 24-2804.)

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Any judge may administer oath if more than one. — In this section, the article "the" is used before the noun "judge." It would not be a proper construction of the language, "the judge of the superior court," to hold that in a county, such as Fulton, where there are five superior court judges, this oath could not be administered to the sheriff by any one of these judges, for the reason that the statute requires this oath to be administered by "the judge," when in fact there was no such judge in Fulton County. This is a familiar illustration of the fact that the article "the," as used in statutes, is often used in the sense of any. Howell v. State, 164 Ga. 204, 138 S.E. 206, appeal dismissed, 275 U.S. 576, 48 S. Ct. 114, 72 L. Ed. 435 (1927).

Cited in Daniel v. State, 187 Ga. 411, 1 S.E.2d 6 (1939); Johnson v. United States Fid. & Guar. Co., 93 Ga. App. 336, 91 S.E.2d 779 (1956); Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956); Ga. Peace Officers Stds. & Training Council v. Anderson, 290 Ga. App. 91, 658 S.E.2d 840 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Qualification of emergency deputies with proper oath. — If a number of emergency deputies are to be appointed, the emergency deputies may all be qualified at a joint meeting by a superior court judge if all counties involved are within the judge's circuit; if, however, other counties are to be served, proper oath must be taken within each such county. 1971 Op. Att'y Gen. No. U71-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 14.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 7.

ALR. — Propriety and prejudicial effect, in criminal case, of placing jury in charge of officer who is a witness in the case, 38 ALR3d 1012.

15-16-4.1. Actions in violation of oath.

Without limiting the generality of the oath set out in Code Section 15-16-4, it shall be a violation of a sheriff's oath of office for any sheriff to engage either directly or indirectly in a private security, private investigation, bail bonding, or wrecker towing business in the county in which the sheriff has jurisdiction. As used in this Code section, "engaging indirectly" in such a business shall include the engagement in a prohibited business by the spouse or an unemancipated child of a sheriff. (Code 1981, § 15-16-4.1, enacted by Ga. L. 2003, p. 320, § 1.)

15-16-5. Required bond.

The sheriffs shall give a bond in the sum of $25,000.00, which amount may be increased in any county by local Act, conditioned for the faithful

accounting for all public and other funds or property coming into the sheriffs' or their deputies' custody, control, care, or possession. (Laws 1799, Cobb's 1851 Digest, p. 575; Code 1863, § 324; Ga. L. 1866, p. 17, § 1; Code 1868, § 385; Code 1873, § 349; Code 1882, § 349; Civil Code 1895, § 4372; Civil Code 1910, § 4906; Code 1933, § 24-2805; Ga. L. 1965, p. 448, § 1; Ga. L. 1975, p. 921, § 1; Ga. L. 1980, p. 495, § 1; Ga. L. 1994, p. 747, § 1.)

Cross references. — Official bonds generally, § 45-4-1 et seq.

Law reviews. — For article on insurance and indemnity for Georgia local government officers under Georgia law, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

Analysis

General Consideration
Liability of Surety
Acts for Which Liability Imposed
Practice and Procedure

General Consideration

Policies underlying bond requirement. — Twin public policies recognized by the requirement that bonds be obtained by sheriffs and their deputies are: (1) the county law enforcement officer should be held liable for tortious activity, even if connected with the sheriff's official duties; and (2) the sheriff should be required to obtain insurance lest the sheriff's liability should be rendered meaningless by poverty. Thompson v. Spikes, 663 F. Supp. 627 (S.D. Ga. 1987).

Construction of statute. — Dismissal of action was affirmed because the bond obtained by the sheriff exceeded the requirement imposed by O.C.G.A. § 15-16-5 by adding another condition, that the sheriff "faithfully perform the duties of his office." That additional condition was invalid and unenforceable under the "read in/read out" rule for construing statutory bonds. Lord v. Lowe, 318 Ga. App. 222, 741 S.E.2d 155 (2012).

Cited in Drost v. Robinson, 194 Ga. 703, 22 S.E.2d 475 (1942); Standard Sur. & Cas. Co. v. Johnson, 74 Ga. App. 823, 41 S.E.2d 576 (1947); Meeks v. Douglas, 108 Ga. App. 424, 133 S.E.2d 768 (1963); Fidelity-Phenix Ins. Co. v. Mauldin, 118 Ga. App. 401, 163 S.E.2d 834 (1968); Warren v. Walton, 231 Ga. 495, 202 S.E.2d 405 (1973); Cantrell v. Thurman, 231 Ga. App. 510, 499 S.E.2d 416 (1998).

Liability of Surety

If bond is joint and several, surety may be sued alone. Cone v. American Sur. Co., 29 Ga. App. 676, 116 S.E. 648 (1923).

Liability of surety depends upon terms of engagement, and is extinguished by an alteration of the contract. Taylor v. Johnson ex rel. Carmichael, 17 Ga. 521 (1855).

Sureties liable for breaches by deputy of sheriff. — Sureties on the official bond of a sheriff are liable for a breach of the bond's condition by a deputy sheriff as well as by the sheriff personally. Shelton v. Fidelity & Cas. Co., 86 Ga. App. 818, 72 S.E.2d 813 (1952).

No surety liability if plaintiff not damaged. — Surety is not liable if the plaintiff is not damaged by a failure of the sheriff to take a bond in a bail trover action. Thurman v. Avera, 20 Ga. App. 802, 93 S.E. 495 (1917).

Acts for Which Liability Imposed

Liability based only on official acts. — Acts deemed not to be official cannot form a basis for imposition of liability on the bonding company. Thompson v. Spikes, 663 F. Supp. 627 (S.D. Ga. 1987).

Illegally requiring or accepting cash bond. — Act of a sheriff in illegally requiring and accepting a cash bond or a sum of money in lieu of bail or in addition to bail from a surety for one charged with an offense against the laws of this state is an act done colore officii and renders the sheriff and the sheriff's sureties liable on the sheriff's official bond to anyone aggrieved. Washburn v. Foster, 87 Ga. App. 132, 73 S.E.2d 240 (1952).

Levying execution on dormant judgment. — Levy of execution based on a dormant judgment, which fact was known to the sheriff, is actionable. Harris v. Black, 143 Ga. 497, 85 S.E. 742 (1915).

False or malicious arrest deemed breach. — While a false or malicious arrest may be a tort, it is likewise a breach of the condition of a sheriff's official bond if the false or malicious arrest is done colore officii. Jackson v. Norton, 75 Ga. App. 650, 44 S.E.2d 269 (1947).

False imprisonment deemed breach. — While false imprisonment may constitute a tort, it also constitutes a breach of the condition of a sheriff's official bond, if the imprisonment is done by such sheriff under color of and by virtue of that person's office as sheriff. Jackson v. Norton, 75 Ga. App. 650, 44 S.E.2d 269 (1947).

Misconduct of sheriff may consist in acts of omission or nonfeasance as in those of commission, misfeasance, or malfeasance. Howard v. Crawford, 15 Ga. 423 (1854).

Liability attached if sheriff failed to serve process, and entered return thereof. Colquitt ex rel. Lackey v. Ivey, 62 Ga. 168 (1878).

No defense that sale's proceeds never collected. — Sheriff's sales in this state are for cash; therefore, neither the sheriff nor the sheriff's surety could raise the point that the sheriff never collected the money derived from such a sale. Prince v. Wood, 23 Ga. App. 56, 97 S.E. 457 (1918).

Practice and Procedure

Nonparty without action for sheriff's failure. — Action for damages will not lie against a sheriff and the sheriff's bondsman, for the alleged failure of the sheriff to serve a process or make a levy, in favor of a person not a party to such a proceeding. Zugar v. Glen Falls Indem. Co., 63 Ga. App. 660, 11 S.E.2d 839 (1940).

Action is one directly for breach of bonds, and the fact that a tort is disclosed in showing the breach of the bond does not render the action one ex delicto. The breach of the bond is alleged as the gist of the action. The fact that some of the language used in showing that the wrongful act of the officers amounted to a breach of the bond happened to be what is denominated a tort does not render the action one ex delicto. Walker v. Whittle, 83 Ga. App. 445, 64 S.E.2d 87 (1951).

Tort by officer. — In a suit on a sheriff's official bond, brought jointly against the sheriff and the surety on the bond, for an alleged wrongful act committed by the sheriff or the sheriff's lawful deputy colore officii, the fact that a tort by the officer is disclosed does not render the action one ex delicto. Jackson v. Norton, 75 Ga. App. 650, 44 S.E.2d 269 (1947).

Direct action against insurance company. — Plaintiff's argument that plaintiffs must be able to maintain suit directly against the sheriff's insurance company in order to realize the protections of O.C.G.A. § 15-16-5 was wrong. The policy's limitations, which limited bringing suit against the insurance company to the insured, did not contravene public policy. Fournier v. Hartford Fire Ins. Co., 862 F. Supp. 357 (N.D. Ga. 1994).

No joinder of bond suit, tort action. — Because suit on a bond is considered an action in contractu, it cannot be joined with a tort action against a bonded official individually, and recovery in a contract action on a bond is limited to the applicable bond coverage. Thompson v. Spikes, 663 F. Supp. 627 (S.D. Ga. 1987).

Rule against sheriff not bar to action. — Rule absolute, under former Civil Code 1910, § 5341 (see now O.C.G.A. § 15-13-1), requiring a sheriff to pay over money, was not a bar to an action on the bond. Prince v. Wood, 23 Ga. App. 56, 97 S.E. 457 (1918).

Suit on sheriff's bond bars second suit. — If the plaintiff had previously elected to sue on the bond of the sheriff, instead of on the deputy's bond, for the

Practice and Procedure (Cont'd)

alleged wrongful acts of the sheriff and the deputy and had prosecuted that suit to judgment for an amount less than the penal sum of the sheriff's bond, the plaintiff was bound by the plaintiff's election and was barred from maintaining a second present suit on the deputy's bond for the same damage and injury for which plaintiff had previously recovered judgment against the surety on the sheriff's bond. Shelton v. Fidelity & Cas. Co., 86 Ga. App. 818, 72 S.E.2d 813 (1952).

Statute of limitations is 20 years. — Sheriff's bond was a specialty within former Civil Code 1910, § 4359 (see now O.C.G.A. § 9-3-23), fixing a 20-year period of limitation. Harris v. Black, 143 Ga. 497, 85 S.E. 742 (1915).

Statute of limitations on sheriff's official bond is 20 years, since the bond is under seal and there is no express statute providing for a different period of limitation of actions. Washburn v. Foster, 87 Ga. App. 132, 73 S.E.2d 240 (1952).

Necessary to allege damages to special interest. — In an action by the holder of a special interest in property for damages alleged to have been caused by failure of the sheriff to make levy and seizure of the property under a bail-trover proceeding, it is necessary to allege the extent of the interest held in order to determine the amount of the damages, damages being given as compensation for injury done, and a failure to make such allegations as to the damage done to the special interest will subject the petition to demurrer (now motion to dismiss). Zugar v. Glen Falls Indem. Co., 63 Ga. App. 660, 11 S.E.2d 839 (1940).

OPINIONS OF THE ATTORNEY GENERAL

Payment of judgment prerequisite to office eligibility. — Judgment against a sheriff-elect for the failure to account for and pay over county moneys must be paid before such an individual is eligible to hold office, and a county must pay the bond premium on that sheriff regardless of the premium charged. 1976 Op. Att'y Gen. No. U76-58.

Sheriffs must be bonded by one corporate surety liable for the full amount of the statutory bond penalty; it is not permissible for sheriffs to file separate corporate surety bonds, each for less than the surety penalty, even if the assumed but fictitious total of the penalties under each bond equals the statutory penalty. 1976 Op. Att'y Gen. No. 76-31.

If surety relieved, new bond, surety, required. — Sheriff's bond is written to cover the sheriff's term of office and since it is required to be given conditioned for the faithful performance of the sheriff's public duty, it can only be canceled with approval of the Governor; in the event the surety is legally relieved from future liability, the sheriff is required to give a new bond and surety and upon failure to do so may be removed from office. 1967 Op. Att'y Gen. No. 67-1.

Deputy sheriff should give bond in same amount as the deputy's principal. 1969 Op. Att'y Gen. No. 69-100.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 14.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 7.

ALR. — Right of individual to maintain action on bond of peace officer, 19 ALR 73.

Liability of sureties on bond of sheriff for unlawful arrest made by him or his deputy beyond his territorial jurisdiction, 149 ALR 1093.

15-16-6. Examination and approval of bond.

(a) The bond given by the sheriff shall be approved by the judge of the probate court and then deposited in the office of the clerk of the superior court until the first session of that court thereafter, when the presiding judge shall examine the bond. If it has been taken in conformity to the law and if the sureties thereon are sufficient, the judge shall so declare by order and shall have the bond and order entered on the minutes of the court. If the bond has not been taken in conformity to the law, the sheriff shall give other bond, which the judge of the superior court is authorized to take and have entered on the minutes.

(b) If a new term of the superior court is begun in the county before the judge of the probate court has approved the sheriff's bond, the judge of the superior court may approve it in the first instance, being careful to take the opinion of the judge of the probate court as to the solvency and sufficiency of the surety. (Laws 1799, Cobb's 1851 Digest, p. 575; Laws 1845, Cobb's 1851 Digest, p. 217; Code 1863, §§ 325, 327; Code 1868, §§ 386, 388; Code 1873, §§ 350, 352; Code 1882, §§ 350, 352; Civil Code 1895, §§ 4373, 4375; Civil Code 1910, §§ 4907, 4909; Code 1933, §§ 24-2806, 24-2808.)

RESEARCH REFERENCES

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 7.

15-16-7. Recordation and filing of bond.

When the sheriff's bond has been approved by the judge of the probate court and before it is deposited in the clerk's office, it shall be recorded in the office of the judge of the probate court and, after being passed upon by the judge of the superior court, it shall be returned to the office of the judge of the probate court and filed by him. If the judge of the superior court compels the sheriff to give a new bond, after the bond has been approved and entered on the minutes it shall be filed in the office of the clerk of the judge of the probate court and shall be recorded therein without further approval. (Orig. Code 1863, § 326; Code 1868, § 387; Code 1873, § 351; Code 1882, § 351; Civil Code 1895, § 4374; Civil Code 1910, § 4908; Code 1933, § 24-2807.)

Law reviews. — For article on bond liability and righting the wrongs of Georgia local government officers, see 13 Ga. L. Rev. 747 (1979).

RESEARCH REFERENCES

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 7.

15-16-8. How vacancies filled; failure to appoint; certification required.

(a) Except as otherwise provided by local law, vacancies in the office of sheriff shall be filled by the chief deputy sheriff if a chief deputy has been appointed. In any county in which a chief deputy sheriff has not been appointed, the probate judge shall, within three days of the vacancy, appoint a qualified person to serve as the interim sheriff.

(b)(1) If less than six months of the sheriff's term of office remains at the time the vacancy occurs, the chief deputy sheriff or the interim sheriff, as the case may be, shall hold office for the unexpired term of the sheriff.

(2) If more than six months of the sheriff's term of office remains at the time the vacancy occurs, the election superintendent for the county shall call a special election to fill such vacancy. Such official shall give notice in one or more of the public newspapers of the county, if any; in the official legal organ of the county; at the courthouse; and at three or more of the most public places of the county at least 30 days prior to the date of such special election. Such special election shall be held at the next available special election date provided in Code Section 21-2-540 that is at least 60 days after the date the vacancy occurred. The person elected at such special election shall hold office for the unexpired term. The election shall be conducted in accordance with Chapter 2 of Title 21.

(c) Notwithstanding the provisions of Code Section 45-5-1, the office of sheriff shall by operation of law be deemed vacant upon certification by the Georgia Peace Officer Standards and Training Council to the judge of the probate court of the county that the certification required to be a peace officer has been revoked for the sheriff of said county. Such vacancy shall be filled as provided in this Code section. (Ga. L. 1853-54, p. 28, § 1; Code 1863, § 322; Code 1868, § 383; Code 1873, § 347; Code 1882, § 347; Civil Code 1895, § 4370; Civil Code 1910, § 4904; Code 1933, § 24-2803; Ga. L. 1982, p. 544, § 2; Ga. L. 1993, p. 1389, § 2; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 521, § 2; Ga. L. 2005, p. 531, § 1/HB 521; Ga. L. 2012, p. 173, § 2-6/HB 665; Ga. L. 2012, p. 815, § 1/HB 991.)

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2012, the amendment of subsection (b) of this Code section by Ga. L. 2012, p. 173, § 2-6/HB 665, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 815, § 1/HB 991, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga.

417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Special election may be held to fill vacancy in office of sheriff which will occur by the resignation of the sheriff to become effective on the day of the special election. 1945-47 Op. Att'y Gen. p. 93.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 12.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 8.

15-16-9. Sheriff's office.

Sheriffs must keep their offices at the same places and on the same terms as clerks of the superior court are required to do. (Orig. Code 1863, § 329; Code 1868, § 390; Code 1873, § 354; Code 1882, § 354; Civil Code 1895, § 4377; Civil Code 1910, § 4911; Code 1933, § 24-2810.)

JUDICIAL DECISIONS

Cited in Dozier v. Norris, 241 Ga. 230, 244 S.E.2d 853 (1978).

15-16-10. Duties; penalties; electronic storage.

(a) It is the duty of the sheriff:

(1) To execute and return the processes and orders of the courts and of officers of competent authority, if not void, with due diligence, when delivered to him for that purpose, according to this Code;

(2) To attend, by himself or his deputy, upon all sessions of the superior court of the county and also upon sessions of the probate court whenever required by the judge thereof and, while the courts are in session, never to leave same without the presence of himself or his deputy, or both, if required;

(3) To attend, in the same manner specified in paragraph (2) of this subsection, at the place or places of holding an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under his charge all subordinate officers present, as police to preserve order;

(4) To publish sales, citations, and other proceedings as required by law and to keep a file of all newspapers in which his official advertisements appear, in the manner required of clerks of the superior courts;

(5) To keep an execution docket wherein he must enter a full description of all executions delivered to him and the dates of their delivery, together with all his actions thereon, and to have the same ready for use in any court of his county;

(6) To keep a book in which shall be entered a record of all sales made by process of court or by agreement of the parties under the sanction of the court, describing accurately the property and the process under which sold, the date of the levy and sale, the purchaser, and the price;

(7) To receive from the preceding sheriff all unexecuted writs and processes and proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his or her predecessor's sales, when not done by his or her predecessor;

(8) To perform such other duties as are or may be imposed by law or which necessarily appertain to his or her office;

(9) To exercise the same duties, powers, and arrest authority within municipalities which such officer exercises in the unincorporated areas of counties; and

(10) To develop and implement a comprehensive plan for the security of the county courthouse and any courthouse annex. Prior to the implementation of any security plan, the plan shall be submitted to the chief judge of the superior court of the circuit wherein the courthouse or courthouse annex is located for review. The chief judge shall have 30 days to review the original or any subsequent security plan. The chief judge may make modifications to the original or any subsequent security plan. The sheriff shall provide to the county governing authority the estimated cost of any security plan and a schedule for implementation 30 days prior to adoption of any security plan. A comprehensive plan for courthouse security shall be considered a confidential matter of public security. Review of a proposed security plan by the governing authority shall be excluded from the requirements of Code Section 50-14-1. Such security plan shall also be excluded from public disclosure pursuant to paragraph (25) of subsection (a) of Code Section 50-18-72. The sheriff shall be the official custodian of the comprehensive courthouse security plan and shall determine who has access to such plan and any such access and review shall occur in the sheriff's office or at a meeting of the county governing authority held as provided in paragraph (4) of subsection (b) of Code Section 50-14-3; provided, however, that the sheriff shall make the original security plan available upon request for temporary, exclusive review by any judge whose courtroom or chambers is located within the courthouse or courthouse annex or by any com-

missioner of the county in which the courthouse or courthouse annex is located. The sheriff shall be responsible to conduct a formal review of the security plan not less than every four years.

(b) If any sheriff or deputy fails to comply with any provision of subsection (a) of this Code section, he or she shall be fined for a contempt as the clerk of superior court is fined in similar cases. Code Section 15-16-26 shall also apply to sheriffs.

(c) In all counties of this state having a population of not less than 625,000 nor more than 725,000 according to the United States decennial census of 2000 or any future such census, it shall be the duty of the sheriffs of such counties to receive, confine, feed, and care for all persons charged with the violation of any ordinances of such counties in the same manner as persons charged with an indictable offense, whether such person charged with the violation of an ordinance is being held pending a hearing before the recorder's courts of such counties or has been sentenced by the recorder's courts to imprisonment in the county jail.

(d) Nothing in this Code section shall restrict or otherwise prohibit a sheriff or a deputy sheriff or clerk acting under the authority of a sheriff from electing to store for computer retrieval any or all records, dockets, books, indices, or files; nor shall a sheriff or a deputy sheriff or clerk acting under the authority of a sheriff be prohibited from combining or consolidating any records, dockets, books, indices, or files in connection with the maintenance of any records of the kind specified or required in this Code section or any other law, provided that any automated or computerized record-keeping method or system shall provide for the systematic and safe preservation and retrieval of all such records, dockets, books, indices, or files. When the sheriff or a deputy sheriff or clerk acting under the authority of the sheriff elects to store for computer retrieval any or all records, the same data elements used in a manual system shall be used, and the same integrity and security maintained. (Laws 1799, Cobb's 1851 Digest, p. 574; Laws 1810, Cobb's 1851 Digest, p. 577; Laws 1818, Cobb's 1851 Digest, p. 858; Laws 1820, Cobb's 1851 Digest, p. 480; Laws 1823, Cobb's 1851 Digest, p. 52; Ga. L. 1853-54, p. 28, § 4; Code 1863, §§ 336, 340; Code 1868, §§ 397, 401; Code 1873, §§ 361, 366; Code 1882, §§ 361, 366; Civil Code 1895, §§ 4380, 4386; Ga. L. 1905, p. 106, § 1; Civil Code 1910, §§ 4914, 4920; Code 1933, §§ 24-2813, 24-2814; Ga. L. 1964, p. 2885, § 1; Ga. L. 1981, p. 3, § 2; Ga. L. 1981, p. 4238, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 2107, § 14; Ga. L. 1992, p. 6, § 15; Ga. L. 1992, p. 1230; Ga. L. 1993, p. 1688, § 1; Ga. L. 2000, p. 844, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2006, p. 560, § 1/SB 462; Ga. L. 2012, p. 173, § 2-7/HB 665; Ga. L. 2012, p. 218, § 4/HB 397.)

Cross references. — Budget for implementing security plans subject to approval by the governing authority, § 36-81-11. Service of process by coroner when sheriff disqualified, § 45-16-8.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

For note, "Finding Immunity: Manders v. Lee and the Erosion of 1983 Liability," see 55 Mercer L. Rev. 1505 (2004).

JUDICIAL DECISIONS

Analysis

General Consideration
Warrant Requirement
Custody
Practice and Procedure
Execution of Process
Removal

General Consideration

Office of sheriff carries all common law duties and powers. — Office of sheriff carries with it, in America, all of its common law duties and powers, except as modified by statute. Elder v. Camp, 193 Ga. 320, 18 S.E.2d 622 (1942); Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956).

Inherent authority of state official to drug screen. — Duly elected constitutional officer must have the inherent authority to implement certain public safety policies. One such public safety policy is the random drug screening of personnel who are authorized to carry weapons. The state has a compelling reason for randomly drug testing law enforcement employees because drug use by law enforcement personnel undermines public confidence in the integrity of law enforcement and poses a danger to fellow employees, prison inmates, and the public at large. Mayo v. Fulton County, 220 Ga. App. 825, 470 S.E.2d 258 (1996).

No reference to any authority for custody of petit jury. — This section, relating to the duties of sheriffs, makes no direct or indirect reference to any duty or authority for the custody of a petit jury during their deliberations in the superior court. Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956).

Sheriff cannot violate constitution in exercising duties. — Office of sheriff carries with the office the duty to preserve the peace and protect the lives, persons, property, health, and morals of the people. But in the exercise of these duties, the sheriff is not permitted to violate the constitutional guaranties against unlawful search and seizure. Elder v. Camp, 193 Ga. 320, 18 S.E.2d 622 (1942).

Liability for contempt depends on good faith of sheriff's conduct. — Whether a sheriff neglected the sheriff's duty would depend on the good faith of the sheriff's conduct, in view of the circumstances under which the sheriff acted; because a former wife failed to show that the sheriff "neglected his duty" in failing to arrest the former husband, the sheriff could not be held in contempt. In re Smith, 205 Ga. App. 857, 424 S.E.2d 45, cert. denied, 205 Ga. App. 900, 424 S.E.2d 45 (1992).

Although the sheriff had a statutory obligation to maintain the jail, the trial court properly held the county in contempt of court for failing to monitor the medical care at the county jail as the county had agreed to do in order to settle a case brought by county jail inmates because the inmates were not receiving adequate medical care. The evidence showed the county was not complying with the settlement agreement and the county had been informed and knew that the issue of contempt would be considered at a hearing the county was ordered to attend. Dorsey v. Adams, 255 Ga. App. 257, 564 S.E.2d 847 (2002).

County commissioner may not di-

vest sheriff of powers and duties. — County commissioners may remove some funds from a sheriff's budget that are required for law enforcement purposes, but not all funds, and may not divest the sheriff of the sheriff's law enforcement power and duty. The budget must be reasonable under all of the circumstances and must provide reasonably sufficient funds to allow the sheriff to discharge the sheriff's legal duties. Chaffin v. Calhoun, 262 Ga. 202, 415 S.E.2d 906 (1992).

County's control over sheriff's personnel or policy. — In a wrongful death action, a county was not liable under 42 U.S.C. § 1983 for the acts of a sheriff because the county had no control over the sheriff's personnel or policy decisions and the sheriff was not an employee of the county commission but rather was an elected, constitutional officer subject to the charge of the Georgia General Assembly. Brown v. Dorsey, 276 Ga. App. 851, 625 S.E.2d 16 (2005).

Superior court's transport order did not usurp county sheriff's authority. — Superior court did not abuse the court's discretion, or usurp the authority of the county sheriff, by ordering the sheriff to transport county jail inmates represented by the county public defender to the county courthouse for pre-arraignment meetings as those actions helped to ensure that the inmates received the effective assistance of counsel. Brown v. Incarcerated Pub. Defender Clients Div. 3, 288 Ga. App. 859, 655 S.E.2d 704 (2007), cert. denied, 2008 Ga. LEXIS 406 (Ga. 2008).

Sheriff has no authority over commissions generated by use of county property or facilities. — County sheriff was not entitled to keep commissions received from a company that provided telephone services to county jail inmates as revenue generated using county property or facilities—such as the jail—was itself county property and therefore subject to county authority under O.C.G.A. § 36-5-22.1. Although a sheriff could collect certain fees, such as fees for attending court, O.C.G.A. § 15-16-21 provided that such fees had to be turned over to the county's treasurer or fiscal officer. Lawson v. Lincoln County, 292 Ga. App. 527, 664 S.E.2d 900 (2008), cert. denied, 2008 Ga. LEXIS 899 (Ga. 2008).

Cited in Floyd County v. Foster, 112 Ga. 133, 37 S.E. 90 (1900); American Booksellers Ass'n v. McAuliffe, 533 F. Supp. 50 (N.D. Ga. 1981); Whiddon v. State, 160 Ga. App. 777, 287 S.E.2d 114 (1982); In re Irvin, 254 Ga. 251, 328 S.E.2d 215 (1985); Middleton v. Smith, 273 Ga. 202, 539 S.E.2d 163 (2000); Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003); Dorsey v. State, 279 Ga. 534, 615 S.E.2d 512 (2005); Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

Warrant Requirement

Power to arrest offender without warrant if offense committed in presence. — Like other police officers or private persons, a sheriff has the power to arrest an offender without a warrant if the offense is committed in the sheriff's presence. Elder v. Camp, 193 Ga. 320, 18 S.E.2d 622 (1942).

Seizure of property without warrant. — Sheriff may seize unlawfully kept property without warrant for search, seizure, or arrest of offender if the sheriff lawfully enters a place of business open to the sheriff as well as other members of the public under an implied invitation to enter, and finds in such place of business "slot machines" of the character described, illegally kept by the owner or operator of such place of business. But these powers would not extend the sheriff's authority to a search of what are actually private premises of the owner to find slot machines in the absence of a warrant. Elder v. Camp, 193 Ga. 320, 18 S.E.2d 622 (1942).

Sheriff's liability for database with warrant information. — County had no 42 U.S.C. § 1983 liability for the sheriff's law enforcement policies and conduct regarding warrant information on database systems or the training and supervision of the sheriff's employees in that regard; under Georgia law, the sheriff's function was to enforce laws and keep the peace on behalf of the state. Grech v. Clayton County, 335 F.3d 1326 (11th Cir. 2003).

Custody

Sheriff of county has a statutory duty to accept all city prisoners and

Custody (Cont'd)

the county commissioners have authority to require the sheriff to do so. Griffin v. Chatham County, 244 Ga. 628, 261 S.E.2d 570 (1979).

Sheriff has custody and responsibility of defendant pending trial. — Custody of a defendant, pending defendant's trial under an indictment for a criminal offense, is in the sheriff of the county wherein the offense was committed, and the responsibility for defendant's safe and secure confinement in jail is that of the sheriff. Howington v. Wilson, 213 Ga. 664, 100 S.E.2d 726 (1957).

Practice and Procedure

Sheriffs and the sheriffs' deputies must be parties to proceedings traversing their entry of service. Northern Freight Lines v. Fireman's Fund Ins. Cos., 121 Ga. App. 786, 175 S.E.2d 104 (1970).

Deputy sheriff may attend court alone. McGuffie v. State, 17 Ga. 497 (1855).

Sheriff may sell land levied upon by sheriff's predecessor. Gower v. New England Mtg. Sec. Co., 152 Ga. 822, 111 S.E. 422 (1922).

Execution of Process

Sale under execution for more than its amount satisfies judgment, whether the process is marked satisfied or not. Jinks v. American Mtg. Co., 102 Ga. 694, 28 S.E. 609 (1897).

Death does not prevent enforcement of execution already issued. — Death of the plaintiff in execution after the execution has been issued and placed in the hands of the levying officer does not prevent such officer from enforcing the execution. Hatcher v. Lord, 115 Ga. 619, 41 S.E. 1007, 61 L.R.A. 353 (1902).

Illegality of one execution does not excuse sheriff from proceeding with others. — If a sheriff holds several fi. fas. against the same defendant, a claim interposed as affidavit of illegality filed as against one of them does not excuse the sheriff from proceeding with the rest. Carr v. Morris, 17 Ga. App. 45, 86 S.E. 94 (1915).

Officer not protected from liability for executing void warrant improperly. — Cursory reading of this section shows that the sentence does not protect an officer acting under color of office from liability for damages for executing even a void warrant in a manner which would have been illegal if the warrant had been valid. If the law excuses the officer for not executing a void warrant, it does not follow that it excuses the officer for improperly executing a void warrant under color of office. This, of course, does not mean that a surety would be liable for acts of a sheriff or a sheriff's deputy when they are purely personal even though in bad faith cloaked in official authority. In order for liability to attach to the surety, a sheriff or the sheriff's deputy must actually be acting as sheriff or as a deputy and without authority to so act in the particular matter. Goforth v. Fidelity & Cas. Co., 80 Ga. App. 121, 55 S.E.2d 656 (1949).

Sheriff is protected in executing process, when it is not irregular or void on its face. King v. Haley, 146 Ga. 85, 90 S.E. 715 (1916).

Sheriff is liable for false and fraudulent return. Duncan v. Webb, 7 Ga. 187 (1849).

Authority of sheriff. — Because a sheriff did not have the authority to make the judicial determination necessary to invalidate tax executions, which were facially valid, a trial court erred in denying a mandamus petition brought by a buyer of the tax executions which sought to compel the sheriff to levy on the executions after the sheriff refused to do so. Vesta Holdings, LLC v. Freeman, 280 Ga. 608, 632 S.E.2d 87 (2006).

Liability of officer for incorrect levy. — Officer who levies an execution founded on a general judgment upon personal property in the custody of the defendant therein, with notice that the defendant's children are the owners, and that the apparent possession of the mother is really their possession, is liable to the children in an action for damages. Waldrup v. Almand, 94 Ga. 623, 19 S.E. 994 (1894).

Entry of satisfaction on execution by purchaser at sale is not evidence of purchaser's title. Dickinson v. Solomons, 26 Ga. 684 (1859).

Removal

Provisions for removal of superior court clerks applicable to sheriffs. — Under former Code 1933, §§ 24-2813, 24-2814, 77-110 and 77-111 (see now O.C.G.A. §§ 15-16-10 and 42-4-4), the provisions of former Code 1933, § 24-2724 (see now O.C.G.A. § 15-6-82), providing for the removal of clerks of the superior court from office, applied to the removal of sheriffs from office. Adamson v. Leathers, 60 Ga. App. 382, 3 S.E.2d 871 (1939).

Sheriffs subject to removal for any sufficient cause. — Under former Code 1933, § 24-2724 (see now O.C.G.A. § 15-6-82), sheriffs were subject to be removed from office for "any sufficient cause," and sufficient cause meant a cause relating to and affecting the administration of the office and material to the interests of the public. Adamson v. Leathers, 60 Ga. App. 382, 3 S.E.2d 871 (1939).

Conviction for malpractice in office not a condition precedent to removal. — Conviction in a criminal prosecution against the county officer for malpractice in office is not a condition precedent to the officer's removal from office. A different ruling would render the removal provision of the Georgia Constitution meaningless since malpractice in office by the officer is not a penal offense. Cole v. Holland, 219 Ga. 227, 132 S.E.2d 657 (1963).

OPINIONS OF THE ATTORNEY GENERAL

Sheriff has right and duty to enforce laws. — In exercising these duties and powers and acting as a conservator of the peace within the county, a sheriff has the right and duty to enforce the laws enacted for the protection of the lives, persons, property, health, and morals of the people. 1977 Op. Att'y Gen. No. 77-83.

Sheriff has all common law duties and powers. — This provision has been interpreted to include all common law duties and powers of sheriffs, except as modified by statute. 1977 Op. Att'y Gen. No. 77-83.

Authority of sheriff to enforce criminal laws. — This section is understood by the Georgia Supreme Court as authorizing the sheriff to enforce the criminal laws generally, and in particular the traffic laws, and in the course of this enforcement to make arrests. 1969 Op. Att'y Gen. No. 69-385.

Sheriff authorized to enforce traffic regulations. — Former Code 1933, §§ 24-2813, 24-2814 and Ga. L. 1937-38, Ex. Sess., p. 558, § 9 (see now O.C.G.A. §§ 15-16-10 and 40-13-30) encompass an authorization to the sheriff to enforce speed limits as well as other traffic regulations. 1969 Op. Att'y Gen. No. 69-385.

County sheriff's department may enforce ordinances prohibiting trucks over ten wheels from using residential roads within county except when making temporary deliveries. 1996 Op. Att'y Gen. No. U96-17.

Sheriff need not investigate accidents on private property. — There is no specific statutory mandate which would require a county sheriff to investigate an accident occurring on private property. 1968 Op. Att'y Gen. No. 68-206.

Presence of sheriff at polling place when necessary for preservation of order. — Sheriff or deputy sheriff may remain within 250 feet of a polling place on a primary or election day even though their presence is not at the request of an election official as long as the sheriff determines such presence to be necessary for preservation of order. 1977 Op. Att'y Gen. No. 77-83.

Court and sheriff responsible for ensuring safety of court. — Court, assisted by the sheriff of the county, is responsible for undertaking measures necessary to ensure the safety of the court during a habeas corpus proceeding; however, this does not relieve the Board of Corrections from any of the Board's constitutional duty for custody of inmates. 1973 Op. Att'y Gen. No. 73-57.

Sheriff required to execute fieri facias irrespective of fee differential. — If any fieri facias is delivered to the sheriff for execution and the sheriff is paid in advance by the party wishing the fieri facias executed, the difference between the sheriff's fee and the constable's fee for such execution, then the sheriff is bound and required to execute the fieri facias. 1965-66 Op. Att'y Gen. No. 65-63.

Execution and return of processes and order of magistrate court. — Sheriff and the sheriff's deputies are not authorized to execute and return the processes and orders of a magistrate court when that court has an appointed constable. 1987 Op. Att'y Gen. No. U87-16.

Order of contempt is order of court. — Order of contempt issuing from a justice of the peace (now magistrate) court is an order of a court within the meaning of this section. 1965-66 Op. Att'y Gen. No. 65-63.

Separation of duties between justice of the peace (now magistrate) and sheriff. — See 1963-65 Op. Att'y Gen. p. 6.

Misconduct sufficient for removal may not constitute grounds for quo warranto. — Misconduct sufficient as grounds for removal under former Code 1933, §§ 24-2724, 24-2813, and 24-2814 (see now O.C.G.A. §§ 15-6-82 and 15-16-10) would not constitute grounds for quo warranto unless such misconduct resulted in conviction and consequent loss of civil rights. 1954-56 Op. Att'y Gen. p. 116.

No provision is made for bailiffs in probate court. 1969 Op. Att'y Gen. No. 69-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 30 et seq.

C.J.S. — 80 C.J.S., Sheriffs and Constables, §§ 34, 206.

ALR. — Execution: effect of return made after return day, 2 ALR 181.

Steps to be taken by officer before resale upon default of purchaser at judicial or execution sale, 24 ALR 1330.

Mistreatment of prisoner as ground for removal of sheriff or other police officer, 100 ALR 1401.

Liability of officer (or sureties on his bond) who conducted sale of property under execution, or other process, to creditors, other than one for whom sale was made, for failure to comply with statutory requirements in making sale, 125 ALR 1147.

What amounts to false return of execution or attachment; justification of alleged false return, 157 ALR 194.

Civil liability of one making false or fraudulent return of process, 31 ALR3d 1393.

Immunity of public officer from liability for injuries caused by negligently released individual, 5 ALR4th 773.

Inadequacy of price as basis for setting aside execution or sheriff's sale — modern cases, 5 ALR4th 794.

15-16-11. Disposition of books.

Reserved. Repealed by Ga. L. 2012, p. 173, § 1-31/HB 665, effective July 1, 2012.

Editor's notes. — This Code section was based on Orig. Code 1863, § 337; Code 1868, § 398; Code 1873, § 363; Code 1882, § 363; Civil Code 1895, § 4383; Civil Code 1910, § 4917; Code 1933, § 24-2820; Ga. L. 2000, p. 844, § 2.

15-16-12. Retention of newspapers.

The sheriff of each county is authorized to enter into agreements with the judge of the probate court or the clerk of the superior court of the county, or both, relative to the retention of newspapers or copies thereof. (Ga. L. 1974, p. 383, § 3.)

JUDICIAL DECISIONS

Cited in American Booksellers Ass'n v. McAuliffe, 533 F. Supp. 50 (N.D. Ga. 1981).

15-16-13. Law enforcement contracts with municipalities authorized; reimbursement to county.

(a) The sheriffs of the various counties of this state are authorized to contract with the governing body of any municipal corporation located within their respective counties, with the written consent of the governing authority of the county, for the purpose of providing law enforcement services to the municipal corporation. Such contracts may include undertakings by the sheriff to perform any police function, to exercise any police power, or to render any police service on behalf of the contracting municipal corporation. Upon the execution of any such contract and within the limitations contained in the contract, the sheriff and his deputies may exercise the same powers as possessed by the contracting municipal corporation with respect to police services and all powers necessary or incidental thereto.

(b) Any contract authorized by this Code section shall not affect, impair, or limit the authority or powers of the municipal corporation or of the sheriff except as otherwise specified in the contract. Sheriffs shall have the same duties, powers, and arrest authority within municipalities which such officers have in unincorporated areas of counties. The duties, powers, and arrest authority of sheriffs shall not be limited, impaired, or affected in any way upon a sheriff and a municipality entering into a contract for the sheriff to provide additional duties or services to a municipality. Nothing in this Code section shall be construed so as to limit, affect, diminish, or impair the rights, powers, or duties of any county or municipal police department as set forth in Code Section 36-8-5 or any law creating or authorizing the creation of a municipal police department.

(c) Such contracts shall provide for the reimbursement of the county for the costs incurred by the sheriff in providing contract services, including, but not limited to, the compensation of deputy sheriffs and other personnel, the costs of funding retirement benefits, insurance, workers' compensation and other fringe benefits for deputies and personnel, the costs of training deputies and other personnel, and the costs of equipment, materials, supplies, and utilities to the extent that such equipment, materials, supplies, and utilities are not furnished by the contracting municipal corporation. Each contract shall provide for the ascertainment of the cost of providing contract services and shall be of such duration as may be agreed upon, unless in conflict with any other general law or the Constitution of this state.

(d) All payments made by a municipal corporation under the terms of any contract authorized by this Code section shall be made to the general fund of the county. Any funds paid into the general fund of the county pursuant to such a contract shall be used for the purposes provided for in this Code section and in the contract and shall be paid by the governing authority of the county.

(e) Any other law to the contrary notwithstanding, the sheriff is authorized to employ such additional deputies and personnel as may be provided for in any contract authorized by this Code section and to purchase such automobiles, equipment, materials, supplies, and utilities as may be provided for in any such contract, the compensation, benefits, expenses, and costs of which shall be paid or funded by the governing authority of the county in an amount or amounts not exceeding the contract payments made by the municipal corporation into the general fund of the county.

(f) This Code section shall not apply to any county of 900,000 population or more according to the United States decennial census of 2010 or any future such census. (Ga. L. 1974, p. 542, §§ 1-4, 4A; Ga. L. 1993, p. 1688, § 2; Ga. L. 2002, p. 1473, § 1; Ga. L. 2012, p. 818, § 1/HB 1026.)

JUDICIAL DECISIONS

Contract requiring that a city pay only a nominal fee for law enforcement services provided by the county sheriff violated O.C.G.A. § 15-16-13. City of Lithia Springs v. Turley, 241 Ga. App. 472, 526 S.E.2d 364 (1999).

15-16-14. Administration of oaths.

Sheriffs and their legal deputies may administer oaths in all cases where, in discharge of the duties of the office of sheriff, it is legal for them to take bond and security or any affidavit which by law suspends the further execution of process in their hands. Such oaths, when so taken, shall be as legal and binding and subject to the same penalty as to perjury as are oaths when administered by any other officer. (Ga. L. 1873, p. 51, § 1; Code 1873, § 362; Code 1882, § 362; Civil Code 1895, § 4382; Civil Code 1910, § 4916; Code 1933, § 24-2819.)

15-16-15. Entries and returns amendable.

The sheriff or other executing officer may amend his official entries and returns so as to make the entries and returns conform to the facts of the case at the time the entries or returns were made. (Orig. Code 1863, § 3426; Code 1868, § 3446; Code 1873, § 3497; Code 1882, § 3497; Civil Code 1895, § 5116; Civil Code 1910, § 5700; Code 1933, § 24-2815.)

JUDICIAL DECISIONS

Amendment of irregular and incomplete return. — In all cases where there has been good service of a petition and process, but an irregular and incomplete return thereof, the defect may be cured by an amendment making the entry conform to the facts. Jones v. Bibb Brick Co., 120 Ga. 321, 48 S.E. 25 (1904); McDuffie Oil & Fertilizer Co. v. Iler, 28 Ga. App. 734, 113 S.E. 52 (1922); Tennessee Chem. Co. v. Harper, 30 Ga. App. 789, 119 S.E. 448 (1923), later appeal, 37 Ga. App. 433, 140 S.E. 408 (1927); Love v. National Liberty Ins. Co., 157 Ga. 259, 121 S.E. 648 (1924).

If there has been no return whatever, deficiency cannot be supplied by way of amendment. Callaway v. Douglasville College, 99 Ga. 623, 25 S.E. 850 (1896); News Printing Co. v. Brunswick Publishing Co., 113 Ga. 160, 38 S.E. 333 (1901).

Amendment of return by official distinguished from such by court judgment. — If a party resorts to a traverse in order to annul the terms and effect of an official entry, the relief obtained results from a judgment of court fixing and declaring the truth as to the controverted facts; whereas the altering by the official amending the official's own entry or return results, not from any compulsion of a judgment establishing the fact, but from the voluntary act of the official personally. Schermerhorn v. National Fire Ins. Co., 38 Ga. App. 470, 144 S.E. 395, cert. denied, 38 Ga. App. 816 (1928).

Amendment to return need not be under oath. Wright v. Davis, 120 Ga. 670, 48 S.E. 170 (1904).

Amendment to return of habeas corpus writ. — Return to the writ of habeas corpus may be amended at any time before the final disposition of the cause. Wright v. Davis, 120 Ga. 670, 48 S.E. 170 (1904).

Amendment of entry by officer while still in office. — Officer making the levy upon realty could make the entry of "no personalty" nunc pro tunc, provided the officer is still in office. Williams v. Moore & Watkins, 68 Ga. 585 (1882); Robinson v. Burge, 71 Ga. 526 (1883).

No authority to amend after officer out of office. — After a constable is out of office, the constable has no authority to amend or alter a levy made by the constable while in office. Jessup v. Gragg, 12 Ga. 261 (1852).

Amendment may prevent case dismissal. — If the constable's return fails to show service of summons on the defendant, the case should be dismissed, on motion made in due time, unless steps are taken to have the return amended. Western & Atl. R.R. v. Pitts, 79 Ga. 532, 4 S.E. 921 (1887).

Amendment to identify defendant as owner. — Entry of levy upon land, which is defective for the reason that it does not state that the property was levied upon as the property of the defendant, may be amended by supplying this statement. Manley v. McKenzie, 128 Ga. 347, 57 S.E. 705 (1907); Dominey v. De Lang, 130 Ga. 618, 61 S.E. 475, 124 Am. St. R. 193 (1908).

Amendment of entry and return of levy. — If the court actually acquired jurisdiction in an attachment proceeding against a nonresident by the levy of an attachment upon the property of the defendant, with notice of such levy given to the defendant, it was not error for the court, at the trial term, to permit the officer to amend the officer's entry and return of the levy so as to show the defendant's interest in the property levied upon. Hendricks v. Georgia Fertilizer Co., 40 Ga. App. 427, 149 S.E. 711 (1929).

Defective description in entry of levy. — It appearing to the court that there was a defective description in the entry of levy upon the property in dispute, it was not erroneous for the court to support an amendment, and allow the amendment to be made by the sheriff accordingly. Hollis v. Rodgers, 106 Ga. 13, 31 S.E. 783 (1898).

Signature omission in entry. — Executing officer was permitted, by amendment, to correct defect of signature omission in entry of levy upon land. Sharp v. Kennedy, 50 Ga. 208 (1873).

Successors of sheriff who made defective levy and died cannot amend

return. Hudspeth v. Scarborough, 69 Ga. 777 (1883).

Cited in Whitlock v. Michael, 206 Ga. 749, 58 S.E.2d 833 (1950); Knox v. Landers, 160 Ga. App. 1, 285 S.E.2d 767 (1981).

15-16-16. Entries and returns nunc pro tunc.

If the sheriff or other executing officer fails to make an official return which by law he should have made, the entry or return may be made nunc pro tunc by order of the court, so as to make the proceedings conform to the facts at the time the entry should have been made. (Orig. Code 1863, § 3427; Code 1868, § 3447; Code 1873, § 3498; Code 1882, § 3498; Civil Code 1895, § 5117; Civil Code 1910, § 5701; Code 1933, § 24-2816.)

JUDICIAL DECISIONS

"By order of the court" defined. — Phrase "by order of the court" means "by command" or "by direction." Aetna Cas. & Sur. Co. v. Sampley, 108 Ga. App. 617, 134 S.E.2d 71 (1963).

Voluntary amendment of records and entries. — When the officer is willing to make the officer's records and entries truthful and in accordance with the facts, and does so voluntarily, this section does not require the officer or the plaintiff to seek from the court an order commanding or directing that it be done. Aetna Cas. & Sur. Co. v. Sampley, 108 Ga. App. 617, 134 S.E.2d 71 (1963).

Return is not jurisdictional. — Process and service are essential, but the return, being only evidence of what the officer has done in serving the writ, is not jurisdictional. Nelson v. Lovett, 104 Ga. App. 770, 123 S.E.2d 4 (1961).

Court may make entry if no return of service. — If there has been no return of service whatever, but evidence can be adduced to show that the defendant has in fact been served, a return of service may be made on motion by an entry on the process nunc pro tunc. Nelson v. Lovett, 104 Ga. App. 770, 123 S.E.2d 4 (1961).

Court may make entry after sheriff out of office. — Even after the sheriff has gone out of office, such nunc pro tunc entry may be made upon proper order of the court. Nelson v. Lovett, 104 Ga. App. 770, 123 S.E.2d 4 (1961).

Dormancy of judgment will not be prevented by nunc pro tunc entry of levy made at a time when the judgment was not dormant. Lewis v. Smith, 99 Ga. 603, 27 S.E. 162 (1896).

Valid amendment nine years after return. — Order nunc pro tunc by an ordinary (now probate judge) nine years after the return of commissioner's setting apart a year's support for a widow was valid. Vaughn v. Fitzgerald, 112 Ga. 517, 37 S.E. 752 (1900).

Cited in Freeman v. Stedham, 34 Ga. App. 143, 128 S.E. 702 (1925).

RESEARCH REFERENCES

ALR. — Execution: effect of return made after return day, 2 ALR 181.

15-16-17. Service and execution of processes from justices' courts.

Reserved. Repealed by Ga. L. 1983, p. 884, § 4-2, effective July 1, 1983.

Editor's notes. — This Code section was based on Ga. L. 1884-85, p. 68, § 1 and Ga. L. 1981, Ex. Sess., p. 8.

15-16-18. Purchase at own sale not permitted.

No sheriff or deputy or other officer discharging a similar duty shall be permitted to purchase any property whatever at his own sale, either upon his own bid or upon the bid of any other person for him, directly or indirectly. All such sales and deeds in pursuance thereto, intended to vest in such officer the title to the property so purchased, shall be null and void. (Laws 1850, Cobb's 1851 Digest, p. 581; Code 1863, § 338; Code 1868, § 399; Code 1873, § 364; Code 1882, § 364; Ga. L. 1884-85, p. 472, § 9; Ga. L. 1890-91, p. 96, § 2; Civil Code 1895, § 4384; Civil Code 1910, § 4918; Code 1933, § 24-2821.)

JUDICIAL DECISIONS

Agent of seller cannot become purchaser. — Former Civil Code 1895, § 4384 (see now O.C.G.A. § 15-16-18) was based on former Civil Code 1895, § 3010 (see now O.C.G.A. § 10-6-24), which provided that an agent of the seller cannot become the purchaser. Harrison v. McHenry, 9 Ga. 164, 52 Am. Dec. 435 (1850); Coleman v. Malcolm, 101 Ga. 303, 28 S.E. 861 (1897).

Crier appointed by sheriff cannot purchase at sale. — Sheriff may appoint a "crier" to conduct the sale for the sheriff, but the crier too comes under the rule and cannot purchase at the sale. Giles v. Bank of S.W. Ga., 102 Ga. 702, 29 S.E. 600 (1897); Associates Fin. Servs. Co. v. Johnson, 128 Ga. App. 712, 197 S.E.2d 764 (1973).

This section applies to receivers, who, like sheriffs and their deputies, make sales under the authority of some order or judgment of the court. Associates Fin. Servs. Co. v. Johnson, 128 Ga. App. 712, 197 S.E.2d 764 (1973).

Bids or purchases by deputy sheriff improper and void. — It is improper for a deputy sheriff to bid upon property at a sale conducted by the office to which the deputy is attached as deputy, and a purchase by the deputy at such a sale, either directly or through a sham transaction, is void. Associates Fin. Servs. Co. v. Johnson, 128 Ga. App. 712, 197 S.E.2d 764 (1973).

Cited in Mayor of Macon v. Huff, 60 Ga. 221 (1878).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judicial Sales, §§ 90, 91.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 83.

ALR. — Steps to be taken by officer before resale upon default of purchaser at judicial or execution sale, 24 ALR 1330.

15-16-19. Fee system abolished; salary.

(a) The fee system of compensating the sheriffs of the various counties in this state or the fee system supplemented by a salary is abolished. No sheriff shall receive as any portion of his compensation

for his services as such any fees, fines, forfeitures, costs, commissions, emoluments, or perquisites of any nature whatsoever.

(b) The sheriffs shall receive no compensation except that compensation which shall be in the nature of an annual salary to be fixed by law. (Ga. L. 1964, p. 310, § 1.)

JUDICIAL DECISIONS

Cited in Dorsey v. State, 279 Ga. 534, 615 S.E.2d 512 (2005).

OPINIONS OF THE ATTORNEY GENERAL

Section inapplicable to sheriffs of various city courts. — Language used in this section is "sheriffs of the various counties," and was intended to relate solely to sheriffs of the superior courts such as are provided for in the statutes, and was not intended to affect sheriffs of the various city courts in the state. 1963-65 Op. Att'y Gen. p. 611.

Proceeds of sale of contraband. — Sheriff is not entitled to proceeds received from sale of contraband articles under Ga. L. 1952, p. 201 (see now O.C.G.A. § 16-13-49). 1975 Op. Att'y Gen. No. U75-41.

Fees for feeding prisoners. — Sheriffs may not be paid fees for feeding prisoners in their custody, either directly or via a contract entered into after competitive bidding. 1983 Op. Att'y Gen. No. U83-29.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 40 et seq.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 256.

15-16-20. Minimum annual salary; increase; operating expenses.

(a)(1) Any other law to the contrary notwithstanding, the minimum annual salary of each sheriff in this state shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 2000 or any future such census; provided, however, that such annual salary shall be recalculated in any year following a census year in which the Department of Community Affairs publishes a census estimate for the county prior to July 1 in such year that is higher than the immediately preceding decennial census. Except as otherwise provided in paragraph (2) of this subsection, each such sheriff shall receive an annual salary, payable in equal monthly installments from the funds of the sheriff's county, of not less than the amount fixed in the following schedule:

Population	Minimum Salary
0 — 5,999	$ 42,045.88

6,000 — 11,889	46,917.92
11,890 — 19,999	53,880.12
20,000 — 28,999	59,328.83
29,000 — 38,999	64,776.16
39,000 — 49,999	70,227.59
50,000 — 74,999	75,674.90
75,000 — 99,999	78,247.21
100,000 — 149,999	80,819.51
150,000 — 199,999	83,695.91
200,000 — 249,999	86,572.30
250,000 — 299,999	94,759.02
300,000 — 399,999	105,822.14
400,000 — 499,999	109,931.24
500,000 or more	114,040.36

(2) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection and in Code Section 15-16-20.1, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (b) of this Code section, where applicable, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-16-20.1, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-16-20.1, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the first day of January

following the date that the cost-of-living increases received by state employees become effective; provided, however, that if the cost-of-living increases or general performance based increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-16-20.1, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(3) The county governing authority may supplement the minimum annual salary of the sheriff in such amount as it may fix from time to time; but no sheriff's compensation supplement shall be decreased during any term of office. Any prior expenditure of county funds to supplement the sheriff's salary in the manner authorized by this paragraph is ratified and confirmed. Nothing contained in this paragraph shall prohibit the General Assembly by local law from supplementing the annual salary of the sheriff.

(b) The amounts provided in paragraph (1) of subsection (a) of this Code section and Code Section 15-16-20.1, as increased by paragraph (2) of subsection (a) of this Code section, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any sheriff after December 31, 1976, effective the first day of January following the completion of each such period of service.

(c) The minimum salaries provided for in this Code section shall be considered as salary only. Expenses for deputies, equipment, supplies, copying equipment, and other necessary and reasonable expenses for the operation of a sheriff's office shall come from funds other than the funds specified as salary in this Code section.

(d) This Code section shall not be construed to reduce the salary of any sheriff in office on July 1, 1991; provided, however, that successors to such sheriffs in office on July 1, 1991, shall be governed by the provisions of this Code section. All local legislation in effect on July 1, 1971, or enacted thereafter affecting compensation for sheriffs of the various counties shall be of full force and effect except where the same provides for a salary lower than provided in this Code section, in which event this Code section shall prevail.

(e) In addition to any salary or fees now or hereafter provided by law, the governing authority of each county is authorized to provide, as an operating expense of the sheriff's office and payable from county funds, a monthly vehicle allowance to the sheriff of that county when the

sheriff's personally owned vehicle is used in the carrying out of the duties of the sheriff's office. If a vehicle allowance is so provided, it shall be in an amount determined by agreement among the budget officer of the county, as provided in Chapter 81 of Title 36, the county governing authority, and the sheriff. (Ga. L. 1971, p. 380, § 1; Ga. L. 1975, p. 521, § 1; Ga. L. 1979, p. 1248, § 1; Ga. L. 1980, p. 550, § 1; Ga. L. 1982, p. 1267, §§ 1-3; Ga. L. 1984, p. 519, § 1; Ga. L. 1984, p. 783, § 1; Ga. L. 1985, p. 430, § 1; Ga. L. 1986, p. 837, § 1; Ga. L. 1987, p. 440, § 2; Ga. L. 1988, p. 931, § 3; Ga. L. 1989, p. 801, § 3; Ga. L. 1992, p. 1478, § 6; Ga. L. 1994, p. 620, § 5; Ga. L. 1998, p. 1159, § 14; Ga. L. 2001, p. 902, § 12; Ga. L. 2006, p. 568, § 8/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-16/HB 642.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "become effective" was substituted for "becomes effective" at the end of paragraph (a)(2).

Editor's notes. — Ga. L. 1988, p. 931, § 5, not codified by the General Assembly, provided that this Code section applied to cost-of-living adjustments received by employees in the classified service of the state merit system after April 5, 1988.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003).

OPINIONS OF THE ATTORNEY GENERAL

Effect of cost-of-living increases adopted by State Personnel Board for fiscal year 1989-1990. — Cost-of-living increases for sheriffs, probate judges, clerks of superior court, tax collectors, and tax commissioners adopted by the State Personnel Board for fiscal year 1989-1990 should take the same form as the corresponding cost-of-living increases for classified employees of the Merit System so that those salaries less than $18,000 in the schedules for sheriff, clerk, probate judge, tax collector, and tax commissioner would be increased $450, the rest 2½ percent. 1989 Op. Att'y Gen. 89-33.

Salary of a sheriff may be supplemented by the General Assembly through local law or by the board of commissioners when the board has been delegated that authority through local law enacted by the General Assembly. 1997 Op. Att'y Gen. No. U97-19.

Only minimum salaries prescribed for sheriffs. — This section does not mandate the actual salary except if the prescribed minimum exceeds the salary which would otherwise be paid. 1977 Op. Att'y Gen. No. U77-2.

Salary increase at completion of full term. — This section entitles sheriffs who complete a full four-year term of office to a 5 percent salary increase. 1975 Op. Att'y Gen. No. U75-47.

Sheriff who served from 1967-1973 is not entitled to a longevity increase upon reassuming office on January 1, 1981. 1982 Op. Att'y Gen. No. U82-8.

Salary of sheriff of Chatham

County. — Sheriff of Chatham County became entitled to an annual salary of $36,336.30 on July 1, 1983, and absent a change in the law will become entitled to an annual salary of $38,153.12 on January 1, 1985. 1983 Op. Att'y Gen. No. U83-74.

Increase at end of term of less than four years duration. — County sheriff is entitled to a 5 percent increase in the sheriff's compensation at the completion of each term of office; however, this section makes no provision for an increase at the end of any term the duration of which is less than four years. 1974 Op. Att'y Gen. No. U74-19.

Sheriffs of city courts not affected by language in preceding section. — Language used in Ga. L. 1964, p. 310, § 1 (see now O.C.G.A. § 15-16-19) is "sheriffs of the various counties," and was intended to relate solely to sheriffs of the superior courts, and was not intended to affect sheriffs of the various city courts in the state. 1963-65 Op. Att'y Gen. p. 611.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 40 et seq.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 256.

15-16-20.1. Additional salary.

In addition to the minimum salary provided in Code Section 15-16-20, the sheriff of any county who performs the duties of a sheriff for a state court, probate court, magistrate court, juvenile court, or county recorder's court under any applicable general or local law of this state shall receive for his or her services in such court or courts a salary of not less than $323.59 per month, to be paid from the funds of the county. A sheriff who serves in more than one such court shall receive only one such salary. (Code 1981, § 15-16-20.1, enacted by Ga. L. 1984, p. 783, § 2; Ga. L. 1985, p. 430, § 2; Ga. L. 1986, p. 837, § 2; Ga. L. 1987, p. 3, § 15; Ga. L. 1998, p. 1159, § 15; Ga. L. 2001, p. 902, § 13; Ga. L. 2006, p. 568, § 9/SB 450.)

15-16-20.2. Monthly contingent expense allowance for the operation of the sheriff's office.

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each county is authorized to provide as contingent expenses for the operation of the office of sheriff, and payable from county funds, a monthly expense allowance of not less than the amount fixed in the following schedule:

Population	Minimum Monthly Expenses
0 — 11,889	$ 100.00
11,890 — 74,999	200.00
75,000 — 249,999	300.00
250,000 — 499,999	400.00
500,000 or more	500.00

(Code 1981, § 15-16-20.2, enacted by Ga. L. 2001, p. 902, § 14; Ga. L. 2015, p. 5, § 15/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "Expenses" for "Expense" in the form.

15-16-21. Fees for sheriff's services; disposition of fees.

(a) Reserved.

(b) For the services of the sheriff in civil cases, the following fees shall be charged:

(1) Serving copy of process and returning original, per copy	$ 50.00
(2) Action from another county, to be paid in advance	50.00
(3) Summoning each witness	10.00
(4) Each levy or writ of fieri facias	50.00
(5) Search and return of nulla bona	20.00
(6) Serving summons of garnishment or rule against garnishee	50.00
If more than one, for each additional copy	6.00
(7) Commissions on sales of property:	
On sums of $50.00 or less	8%
On excess above $50.00 up to $550.00	6%
For all sums exceeding $550.00, on excess	3%
No commissions shall be charged unless property is actually sold.	
(8) Making out and executing titles to land	50.00
If presented by purchaser	20.00
(9) Executing bill of sale to personal property, when demanded by purchaser	20.00
(10) Forthcoming bonds	13.00
(11) Serving process against tenant over or intruder upon land to dispossess them	25.00
(12) For dispossessing tenant or intruder	25.00
(13) Taking and returning counter-affidavit when summary process to dispossess tenant or intruder is	

resisted	13.00
(14) Settling each execution in his or her hands, settled without sale	20.00
(15) Levying an attachment	50.00
(16) Reserved.	
(17) Reserved.	
(18) Reserved.	
(19) Reserved.	
(20) Collecting tax fi. fas. $100.00 or less, each	10.00
(21) Collecting tax fi. fas. over $100.00, each	20.00

(c) For executing and returning any warrant or for serving a citation, the fees to which a sheriff is entitled as provided in this subsection shall be paid at the disposition of the criminal case. For summoning witnesses or taking bonds in criminal cases, the fees to which a sheriff is entitled as provided in this subsection shall be paid in advance prior to the sheriff's rendering such service. For the services of the sheriff in criminal cases, the following fees shall be charged:

(1) Removing prisoner when habeas corpus is sought for his or her relief	$ 15.00
(2) Removing prisoners under habeas corpus when no mileage is paid, per day	15.00
(3) Attending persons taken by warrant to judge's chamber, for each time	4.50
(4) Conducting prisoner before judge or court to and from jail	4.50
(5) Executing and returning any warrant	25.00
(6) Serving any citation issued pursuant to Article 10 of Chapter 10 of this title, relating to bad check prosecutions or any warrant	25.00
(7) Summoning each witness	10.00
(8) Taking bonds in criminal cases	20.00
(9) Executing a warrant of escape	10.00
(10) Service in every criminal case before a judge or a judge and jury	10.00

(d) For feeding prisoners confined in the common jail, such fees are to be paid as may be fixed by the fiscal authorities of the county who are

authorized by law to fix such fees. The jail fees herein provided shall be paid monthly by the county, provided that local laws regulating county jails or fixing salaries for jailers or their fees shall not be repealed by this provision.

(e) All costs arising from services rendered in felony cases shall be paid from county funds whether the defendant is convicted or acquitted.

(f) Sheriffs shall be entitled to receive the fees provided for in this Code section for all arrests in all criminal cases tried or otherwise disposed of in the superior, city, state, and probate courts.

(g) All costs provided for under this Code section shall be paid at the clerk's office at the time of filing.

(h) No fee shall be assessed against the alleged victim of a violation of Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, 16-6-22.1, or 16-6-22.2 or against the alleged victim of any domestic violence offense for costs associated with the filing of criminal charges against the stalking offender, sexual offender, or domestic violence offender or for the issuance or service of a warrant, protective order, or witness subpoena arising from the incident of stalking, sexual assault, or domestic violence. (Laws 1792, Cobb's 1851 Digest, pp. 350, 351; Laws 1840, Cobb's 1851 Digest, p. 362; Ga. L. 1851-52, p. 20, § 1; Ga. L. 1857, p. 52, § 3; Code 1863, § 3621; Ga. L. 1866, p. 24, § 1; Code 1868, § 3646; Code 1873, § 3696; Ga. L. 1880-81, p. 90, §§ 1, 2; Code 1882, § 3696; Ga. L. 1884-85, p. 470, § 9; Ga. L. 1890-91, p. 96, § 2; Ga. L. 1894, p. 48, § 1; Civil Code 1895, § 5401; Penal Code 1895, § 1107; Ga. L. 1898, p. 58, § 1; Ga. L. 1898, p. 62, § 1; Ga. L. 1906, p. 119, § 1; Civil Code 1910, § 5997; Penal Code 1910, § 1134; Ga. L. 1918, p. 226, § 1; Ga. L. 1919, p. 364, § 1; Code 1933, § 24-2823; Ga. L. 1943, p. 591, § 1; Ga. L. 1945, p. 144, §§ 1, 2; Ga. L. 1945, p. 221; Ga. L. 1955, p. 383, § 1; Ga. L. 1968, p. 988, §§ 1, 2; Ga. L. 1976, p. 702, §§ 1-3; Ga. L. 1979, p. 988, §§ 1, 2; Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 1659, §§ 1-4; Ga. L. 1983, p. 3, § 12; Ga. L. 1988, p. 548, §§ 1, 2; Ga. L. 1991, p. 1166, §§ 1, 2; Ga. L. 1992, p. 1311, § 2; Ga. L. 1996, p. 883, § 4; Ga. L. 2001, p. 885, § 3; Ga. L. 2010, p. 9, § 1-43/HB 1055; Ga. L. 2011, p. 59, § 1-62/HB 415; Ga. L. 2011, p. 752, § 15/HB 142.)

Cross references. — Giving of receipts for fees and penalty for charging excessive fees, § 15-13-30 et seq. Costs for transfers between magistrate courts, Uniform Rules for the Magistrate Courts, Rule 36.3.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

This Code section should be strictly construed, and a sheriff is not entitled to pay unless it be expressly provided for by statute. Walton County v. Dean, 23 Ga. App. 97, 97 S.E. 561 (1918).

Venue for action against sheriff's office for noncompliance. — Trial court erred in finding that venue was proper in Dougherty County, Georgia and in denying the defendants' motion to dismiss on that basis because proper venue for the case against the state defendants for noncompliance with O.C.G.A. § 15-16-21(b)(1) and (g) was in Fulton County, Georgia, as although the defendants maintained offices throughout the State of Georgia, the defendants' principal offices were located in Fulton County. Ga. Dep't of Human Servs. v. Dougherty County, 330 Ga. App. 581, 768 S.E.2d 771 (2015).

Yearly compensation provided by Act of 1915 is in nature of salary. — Yearly compensation provided by the Act of the General Assembly (Ga. L. Ex. Sess. 1915, p. 85) for performance of the duties imposed on sheriffs of the several counties of this state is in the nature of salary, and its payment is therefore not dependent upon the performance by the officers of such duties. Tucker v. Shoemaker, 149 Ga. 250, 99 S.E. 865 (1919).

Preserving property. — Necessary and reasonable expense incurred by the sheriff in preserving and taking care of the property is to be awarded by the court. Eskind v. Harvey, 20 Ga. App. 412, 93 S.E. 39 (1917).

Expenses cannot be retained out of levy that is quashed. Ward v. Barnes, 95 Ga. 103, 22 S.E. 133 (1894).

No commission on sale not consummated. Cherry v. Planters' Whse. Co., 65 Ga. 535 (1880).

Landlord liable for costs if distress warrant fails. — If the landlord lost a case, the landlord was liable for all the costs incurred in and about the distress warrant proceeding. These costs and expenses included not only the costs allowed by this section, but also the expense of gathering and marketing the crop. It was the duty of the sheriff to gather the crop, take care of the crop, and prepare the crop for market; and all of the expenses incurred by the sheriff in the performance of this duty should be paid by the landlord, who was responsible for the expense. Aycock v. Buffington, 2 Ga. 268 (1847); Reynolds v. Howard, 113 Ga. 349, 38 S.E. 849 (1901); McMichael v. Southern Ry., 117 Ga. 518, 43 S.E. 850 (1903).

Sheriff is entitled to charge and collect a fee for each witness for state summoned by the sheriff to appear either before the grand jury or petit jury, and the county is authorized and shall pay such fee to the sheriff. Floyd County v. Johnson, 80 Ga. App. 785, 57 S.E.2d 502 (1950).

Sheriff and deputies entitled to fee and expenses for services rendered in felony cases. — Not only the sheriff, but each of the deputies, is entitled to a fee and actual expenses for performing services rendered out of the county in felony cases when authorized by the proper county authorities, and the county is authorized and could be required to pay such fees to such officers from county funds. Floyd County v. Johnson, 80 Ga. App. 785, 57 S.E.2d 502 (1950).

Payment of sheriff's costs from general county funds in felony cases. — It was unquestionably the intention of the General Assembly to require the counties to pay the sheriff's costs from general county funds in all disposed-of felony cases if such costs are not collectible or for any reason are not collected out of the defendants. Lewis v. Gay, 215 Ga. 90, 109 S.E.2d 268 (1959).

Sheriff entitled to reasonable expenses incurred in performance of official duties. — Sheriff, in making a levy, sale, and delivery of personalty, in addition to the sheriff's own costs or compensation expressly fixed by law, is entitled to the sheriff's reasonable expenses, as distinguished from compensation, necessarily incurred in the performance of the sheriff's official duties, except that in "keeping" a horse, mule, head of cattle, sheep, hogs, or goats, such allowance is expressly limited and prescribed by statute. Hiatt v. Turner, 48 Ga. App. 255, 172 S.E. 607 (1934).

Sheriffs entitled to fees for services rendered. — Sheriffs are entitled to a fee

for attendance upon the trial of an accused or attendance before a court when an accused enters a plea of guilty or if an accused is brought before the court and the case against the accused is nolle prosequi. Sikes v. Charlton County, 103 Ga. App. 251, 119 S.E.2d 59 (1961).

Officer entitled to one arrest fee although two or more offenses charged. — If only one arrest is made and a prisoner while under arrest is charged with two or more offenses, the arresting officer is entitled to one arrest fee. Sikes v. Charlton County, 103 Ga. App. 251, 119 S.E.2d 59 (1961).

Sheriff is not entitled to fee unless offender is physically brought before court. Sikes v. Charlton County, 103 Ga. App. 251, 119 S.E.2d 59 (1961).

Turnkey fees. — Turnkey fees are court costs chargeable to and collectible from defendant on conviction of criminal offense. However, these costs, like all other costs due the sheriff in disposed-of felony cases, become a charge against the county and must be paid from county funds when not collectible or collected from the defendant. Lewis v. Gay, 215 Ga. 90, 109 S.E.2d 268 (1959).

Compensation of sheriffs and jailer fixed by general law. — Compensation of the sheriff and jailer, and from whom and in what manner compensation shall be received, are fixed by general law. For a local Act to undertake to pay the sheriff out of county funds a salary for keeping the jail is to add to the sheriff's compensation which is fixed under the general law. Chappell v. Kilgore, 196 Ga. 591, 27 S.E.2d 89 (1943).

No general law for payment of sheriff for keeping jail. — That there is under the general law no separate provision for paying the sheriff for keeping the jail does not mean that the entire compensation of the sheriff is not fixed by general law. Chappell v. Kilgore, 196 Ga. 591, 27 S.E.2d 89 (1943).

Sheriff not entitled to commissions generated by use of county jail telephones. — County sheriff was not entitled to keep commissions received from a company that provided telephone services to county jail inmates as revenue generated using county property or facilities—such as the jail—was itself county property and therefore subject to county authority under O.C.G.A. § 36-5-22.1. Although a sheriff could collect certain fees, such as fees for attending court, O.C.G.A. § 15-16-21 provided that such fees had to be turned over to the county's treasurer or fiscal officer. Lawson v. Lincoln County, 292 Ga. App. 527, 664 S.E.2d 900 (2008), cert. denied, 2008 Ga. LEXIS 899 (Ga. 2008).

Cited in Newport v. Longino, 178 Ga. 797, 174 S.E. 537 (1934); Zugar v. Scarbrough, 186 Ga. 310, 197 S.E. 854 (1938); Christian v. Moreland, 203 Ga. 20, 45 S.E.2d 201 (1947); Garrett v. Board of Comm'rs, 215 Ga. 351, 110 S.E.2d 626 (1959); Richmond County v. Pierce, 234 Ga. 274, 215 S.E.2d 665 (1975); Giddens v. State, 156 Ga. App. 258, 274 S.E.2d 595 (1980); Orr v. Culpepper, 161 Ga. App. 801, 288 S.E.2d 898 (1982); Walden v. State, 185 Ga. App. 413, 364 S.E.2d 304 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Recovery from landlord for removing tenant's property. — Under O.C.G.A. § 15-16-21(b)(12), the sheriff is entitled to recover from the landlord the reasonable expense incurred in removing a tenant's property pursuant to a writ of possession. 1985 Op. Att'y Gen. No. U85-36.

Petition under Family Violence Act. — In the case of a petition filed under the Family Violence Act, O.C.G.A. § 19-13-1 et seq., if service of process is necessary, the sheriff's $20 fee should be imposed in addition to the $16 filing fee under the Family Violence Act. 1988 Op. Att'y Gen. No. U88-11.

When sheriff's fees paid. — Sheriff's fees should be paid at clerk's office at time of filing, if required in a particular case, and payment of the sheriff's fees is required in addition to the deposit for the clerk's fees which is payable at the time of filing in appropriate cases. 1976 Op. Att'y Gen. No. U76-37.

Advance payment to sheriff. — If sheriff makes service in suit filed in an-

other county, fee should be paid in advance. 1970 Op. Att'y Gen. No. U70-38.

Sheriff entitled to receive named fee for service. — If a sheriff has in fact performed a service either personally or by an authorized deputy in a criminal case before a judge or before a judge and a jury, the sheriff would be entitled to receive the named fee for such service. 1962 Op. Att'y Gen. p. 79.

Sheriff is entitled to only one fee for each arrest regardless of the number of offenses charged against the prisoner. 1945-47 Op. Att'y Gen. p. 92.

Distinction between items of service involving prisoner transport. — Distinction between "Conducting prisoner before judge or court to and from jail," and "Attending person taken by warrant to judge's chambers," are two separate items of service; the first is when the sheriff conducts a prisoner to and from jail before the judge or court, whereas the latter is when the sheriff attends a person taken by a warrant to the judge's chambers. Of course if the sheriff did not place the prisoner in jail, the sheriff could not transport the person from the jail because the sheriff would have had to transfer the person from some other place and therefore would not be entitled to a fee for services which were not performed. 1957 Op. Att'y Gen. p. 234.

Multiple fees for separate and distinct items of service. — Construing Ga. L. 1937-38, Ex. Sess., p. 558, § 5, Ga. L. 1943, p. 571, § 1 and former Code 1933, § 24-2823 (see now O.C.G.A. §§ 15-16-21, 40-13-25, and 40-13-31), a sheriff was entitled to a fee for conducting a prisoner to and from jail before a judge or the court and the sheriff was also entitled to a fee for every criminal case before a judge or judge and jury since the services in a criminal case in the courtroom were a separate and distinct item of service from that of conducting a prisoner to and from jail. 1948-49 Op. Att'y Gen. p. 487.

Fee for conducting prisoners is individual charge per trip. — Fee for conducting prisoners before a judge or the court to and from jail is an individual charge per trip as they are made. Of course if this was abused, and unnecessary trips made, it would be a question which would address itself to the courts to determine from the facts as to whether or not such excessive trips would entitle the sheriff to be paid therefor. However, there can be no doubt that the usual and ordinary trips, which would include lunch or any other meal which would be necessary, would be a proper charge. 1957 Op. Att'y Gen. p. 235.

Payment from county funds for sheriff's felony fees. — Sheriff is entitled to collect from county funds all costs due in felony cases, for mileage fees, fees for guards, and for subpoenaing witnesses for the state, and would not be entitled to have such amount so paid by the county added to the sheriff's insolvent bill, which might arise because of the reason of the disposition of misdemeanor cases. 1945-47 Op. Att'y Gen. p. 89.

Sheriff's costs in felony cases are paid from the general county fund and the county may not charge the amount paid against the fines and forfeitures. 1945-47 Op. Att'y Gen. p. 89.

All fees accruing to sheriff in felony cases should be paid from county funds rather than from the fines and forfeitures fund. 1952-53 Op. Att'y Gen. p. 321.

Fees that sheriff is entitled to receive in felony cases are proper charge against county; the county is required to pay the sheriff's costs from general county funds in all disposed-of felony cases if such costs are not collectible or for any reason are not collected out of the defendants. 1962 Op. Att'y Gen. p. 85.

Jail fees, which include turnkey fees, paid monthly by county. — Turnkey fees are classified as jail fees, and such jail fees shall be paid monthly by the county. 1945-47 Op. Att'y Gen. p. 91.

Sheriff's fee for collecting tax fi. fa. is in addition to tax collector's fee for issuing tax execution. 1945-47 Op. Att'y Gen. p. 89.

Execution of fi. fa. by sheriff. — If any fi. fa. is delivered to the sheriff for execution and the sheriff is paid in advance by the party wishing the fi. fa. executed, the difference between the sheriff's fee and the constable's fee for such execution, then the sheriff is bound and required to execute the fi. fa. 1965-66 Op. Att'y Gen. No. 65-63.

Settlement should not defeat right to fees due officer. — Subsection (e) of this section applies whether the defendant is convicted or acquitted, and disposal of a case by settlement in the nature of nolle prosequi should not defeat any right to fees due an officer. 1963-65 Op. Att'y Gen. p. 609.

No turnkey fee without physical locking up of accused. — Even though an arrest is made and a traffic case follows, if there is no physical locking up of the accused in a jail, the sheriff would not be entitled to a turnkey fee. 1962 Op. Att'y Gen. p. 82.

When sheriff not entitled to fee unless collected from defendant in fi. fa. — Sheriff is not entitled to any fee on a return of a nulla bona unless it is collected out of the defendant in fi. fa. and the sheriff is not entitled to any fee on the collection of tax fi. fa. unless the collection is actually made from the defendant in fi. fa. 1950-51 Op. Att'y Gen. p. 254.

Sheriff entitled to fee for assisting state patrol. — Sheriff is entitled to a fee for assisting in the arrest, or taking custody of persons apprehended by the Georgia State Patrol. 1945-47 Op. Att'y Gen. p. 94.

Sheriff is not entitled to arresting fee if apprehension is made by game warden. 1954-56 Op. Att'y Gen. p. 113.

Sheriff is not required to execute warrants issued by presidents of courts-martial and the sheriff is not entitled to fees for executing those warrants. 1950-51 Op. Att'y Gen. p. 31.

Distinction between summoning witness and serving process. — Summoning each witness is an entirely different matter from serving a copy of process and returning the original; in serving a copy of process, the sheriff is made a party to the suit. 1965-66 Op. Att'y Gen. No. 66-75.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 43 et seq.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 257.

15-16-22. Mileage fees for service outside county.

For serving any process, summons, or notice in a county other than the county of his residence, a sheriff shall charge 10¢ per mile for each mile traveled outside the county of his residence, whether the service is made by the sheriff or by a deputy. The fees shall be taxed as a part of the costs in the case to which the process, summons, or notice pertains. The sheriff, before serving or having served the process, summons, or notice outside the county of his residence, shall have a right to require the party or his attorney requesting the service to deposit with him a sufficient amount to cover the mileage fees provided for in this Code section. (Ga. L. 1945, p. 147, § 3.)

Cross references. — Legal mileage allowance for travel expenses of state officers, officials, and employees, § 50-19-7.

15-16-23. Appointment of deputy sheriffs; bond.

Sheriffs are authorized in their discretion to appoint one or more deputies. Each deputy shall be required to execute a bond with a surety in the amount of $5,000.00 payable to the sheriff and conditioned upon

the faithful accounting for all public and other funds or property coming into the deputy's custody, control, care, or possession. (Laws 1799, Cobb's 1851 Digest, p. 575; Code 1863, § 330; Code 1868, § 391; Code 1873, § 355; Code 1882, § 355; Civil Code 1895, § 4378; Civil Code 1910, § 4912; Code 1933, § 24-2811; Ga. L. 1982, p. 1779, §§ 1, 3; Ga. L. 1994, p. 747, § 2.)

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Deputy sheriffs are employees of sheriff, whom the sheriffs alone are entitled to appoint or discharge. Employees Retirement Sys. v. Lewis, 109 Ga. App. 476, 136 S.E.2d 518 (1964), overruled on other grounds, 240 Ga. 770, 243 S.E.2d 28 (1978).

Ordinarily, deputy sheriffs are employees of the sheriff and subject to be discharged by the latter. Best v. State, 109 Ga. App. 553, 136 S.E.2d 496 (1964).

Office under personnel system. — Once positions in a sheriff's office have been made subject to a personnel or civil service system, a sheriff's authority to appoint deputies pursuant to O.C.G.A. § 15-16-23 is limited to vacancies created by the removal of employees in the manner provided under the applicable personnel or civil service system or vacancies created when employees resign or retire. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793 (1993).

If it was not clearly established at the time in question that a sheriff was bound by a county merit system and that employees of the sheriff had a property interest in their jobs, the sheriff was entitled to qualified immunity from the employees' claim of wrongful termination from their jobs. Aspinwall v. Herrin, 879 F. Supp. 1227 (S.D. Ga. 1994).

Sheriffs have absolute discretion in the hiring and firing of deputies and the only process by which this discretion may be limited is through adoption of a civil service system in compliance with O.C.G.A. § 36-1-21(b); if a sheriff had not complied with such provision, deputies had no protected property interest in their positions. Brett v. Jefferson County, 925 F. Supp. 786 (S.D. Ga. 1996), aff'd in part and vacated in part, 123 F.3d 1429 (11th Cir. 1997).

Duties of deputy sheriff. — Deputy sheriffs have no duties save alone duties of sheriff, which as the sheriff's deputy and the sheriff's agent the deputies are by law authorized to perform. Employees Retirement Sys. v. Lewis, 109 Ga. App. 476, 136 S.E.2d 518 (1964), overruled on other grounds, 240 Ga. 770, 243 S.E.2d 28 (1978).

Deputy must obey directions of sheriff. — Deputy sheriff who is an employee of the sheriff in that the deputy must obey the directions of the sheriff as to matters pertaining to the proper discharge of the deputy's official duties, and who may be employed or discharged by the sheriff, is still not an employee of the sheriff in the sense in which the word is usually used and according to the customary signification given the word. Johnson v. United States Fid. & Guar. Co., 93 Ga. App. 336, 91 S.E.2d 779 (1956).

Authority of sheriff over deputy. — Deputy is the sheriff's employee only in the sense that the sheriff has the power to appoint and discharge the deputy, and is also vested with legal authority to direct and regulate the deputy's conduct in reference to the discharge of the deputy's official duties. Johnson v. United States Fid. & Guar. Co., 93 Ga. App. 336, 91 S.E.2d 779 (1956).

Tenure of deputy. — Tenure in employment of a deputy jailer or deputy

sheriff is dependent not alone upon the will of the sheriff whose employee the deputy is and who may discharge the deputy when the deputy chooses, but also upon the reelection of the sheriff. Employees Retirement Sys. v. Lewis, 109 Ga. App. 476, 136 S.E.2d 518 (1964), overruled on other grounds, 240 Ga. 770, 243 S.E.2d 28 (1978).

Deputy serves as agent of sheriff. — If the sheriff and deputy are both present and engaged in the performance of the duties of the sheriff's office, the former is in charge of the entire operation, and the deputy is the agent in effecting the proper discharge of such duties. Archer v. Aristocrat Ice Cream Co., 87 Ga. App. 567, 74 S.E.2d 470 (1953).

Sheriff's office is not a legal entity capable of being sued. — County sheriff's office was not a proper defendant in plaintiff's injury action because the sheriff's office was not an entity capable of being sued under Fed. R. Civ. P. 17 in that the sheriff was a constitutionally created office under both Ga. Const. 1983, Art. IX, Sec. I, Para. III(a), and Fla. Const. Art. 8, Sec. 1, and employees acted in the name of the sheriff and not as an employee of the sheriff's office under O.C.G.A. § 15-16-23 and Fla. Stat. § 30.07. Harris v. Lawson, No. 7:08-CV-70 (HL), 2008 U.S. Dist. LEXIS 78808 (M.D. Ga. Aug. 27, 2008).

Cited in Culpepper v. United States Fid. & Guar. Co., 199 Ga. 56, 33 S.E.2d 168 (1945); Smith v. Branch, 215 Ga. 744, 113 S.E.2d 445 (1960); Talley v. State, 129 Ga. App. 479, 199 S.E.2d 908 (1973); Vaughn v. State, 160 Ga. App. 283, 287 S.E.2d 277 (1981); Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003).

Sheriff's Liability for Deputy

Sheriff's liability for deputy's performance of duties. — Sheriffs "are authorized in their discretion to appoint one or more deputies, from whom they must take a bond with sureties" and are liable on the sheriffs' official bonds "for the faithful performance of their duties as sheriffs, by themselves, their deputies, and their jailers." Board of Comm'rs v. Whittle, 180 Ga. 166, 178 S.E. 534 (1935).

Bond from deputy. — Sheriff is required to take bond from the sheriff's deputy, and for failure to discharge the sheriff's duty in this respect the sheriff may be held liable, even after the sheriff's retirement from office, by any person who has been injured. Maryland Cas. Co. v. Smith, 56 Ga. App. 154, 192 S.E. 449 (1937).

Liability of sheriff, deputy, and sureties on bond. — Liability of the sureties to bond given by deputy sheriff are commensurate with sheriffs. Wallace v. Holly, 13 Ga. 389, 58 Am. Dec. 518 (1853).

While the sheriff and the sheriff's sureties were liable on their bond, under former Civil Code 1910, § 4906 (see now O.C.G.A. § 15-16-5), for acts of the deputy, the deputy and the deputy's sureties were in turn liable on their bond either to the sheriff or to the litigants. Cochran v. Whitworth, 21 Ga. App. 406, 94 S.E. 609 (1917).

Correctness of bond and solvency of surety. — It is the sheriff's responsibility to see as to correctness of deputy's bond and solvency of surety for the bond is not made payable to the sheriff's successor in office but to the sheriff alone, and upon a breach of that bond the sheriff, as obligee, may maintain suit on the instrument in the sheriff's own name, even though prior to the bringing of the suit the sheriff may have gone out of office. Maryland Cas. Co. v. Smith, 56 Ga. App. 157, 192 S.E. 449 (1937).

Sheriff is not personally liable for negligent acts of the deputy which acts are in no way connected with the performance of the deputy's official duties. Gay v. Healan, 88 Ga. App. 533, 77 S.E.2d 47 (1953).

Liability to be based only on official acts. — Acts deemed not to be official cannot form a basis for imposition of liability on the bonding company. Thompson v. Spikes, 663 F. Supp. 627 (S.D. Ga. 1987).

Deputy sheriff cannot be ruled under former Code 1868, § 3883 (see now O.C.G.A. § 15-13-9) if deputy has accounted to sheriff. Varner v. Wootten, 38 Ga. 575 (1869).

Liability of sheriff for training. — County had no 42 U.S.C. § 1983 liability for the sheriff's law enforcement policies

Sheriff's Liability for Deputy (Cont'd)

and conduct regarding warrant information on database systems or the training and supervision of the sheriff's employees in that regard; under Georgia law, the sheriff's function was to enforce laws and keep the peace on behalf of the state. Grech v. Clayton County, 335 F.3d 1326 (11th Cir. 2003).

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Validity of entry of service made by deputy. — Entry of service upon a bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50) made and signed by a deputy sheriff is valid. Jones v. Rountree, 96 Ga. 230, 23 S.E. 311 (1895).

Service of process by deputy. — Deputy sheriff cannot serve process of city court, unless legally appointed deputy thereof. United States Motor Co. v. Baughman Auto. Co., 16 Ga. App. 783, 86 S.E. 464 (1915).

Contract impeding sheriff's responsibility to public is unenforceable. — To the extent that a deputy sheriff's employment contract may impede the sheriff's responsibility to the public, the contract is unenforceable by the employee as being against public policy. Hewatt v. Bonner, 142 Ga. App. 442, 236 S.E.2d 111 (1977).

County liability for sheriff's actions. — Though it is true that a county could not be held liable solely on a theory of respondeat superior for the actions of its sheriff, the county could be liable under 42 U.S.C. § 1983 for the sheriff's actions in depriving the sheriff's employees of their constitutional rights since the sheriff was the final authority responsible for establishing government policy. Johnson v. Ballard, 644 F. Supp. 333 (N.D. Ga. 1986).

In a wrongful death action, a county was not liable under 42 U.S.C. § 1983 for the acts of a sheriff because the county had no control over the sheriff's personnel or policy decisions and the sheriff was not an employee of the county commission but rather was an elected, constitutional officer subject to the charge of the Georgia General Assembly. Brown v. Dorsey, 276 Ga. App. 851, 625 S.E.2d 16 (2005).

Policies underlying bond requirement. — Twin public policies recognized by the requirement that bonds be obtained by sheriffs and their deputies are: (1) the county law enforcement officer should be held liable for tortious activity, even when connected with the officer's official duties; and (2) the officer should be required to obtain insurance lest the officer's liability should be rendered meaningless by the officer's poverty. Thompson v. Spikes, 663 F. Supp. 627 (S.D. Ga. 1987).

No joinder of suit on bond and tort action. — Because suit on a bond is considered an action in contractu, it cannot be joined with a tort action against a bonded official individually, and recovery in a contract action on a bond is limited to the applicable bond coverage. Thompson v. Spikes, 663 F. Supp. 627 (S.D. Ga. 1987).

OPINIONS OF THE ATTORNEY GENERAL

Office of "special deputy sheriff" exists only in counties affected by this section, and any person holding oneself out as a "special deputy sheriff" in any other county either has no legal standing or is an actual deputy sheriff appointed under the provisions of this section. 1975 Op. Att'y Gen. No. 75-64.

Deputies employed by sheriff are employees of sheriff, not the county governing authority, and the sheriff alone is entitled to appoint and discharge the deputies. 1975 Op. Att'y Gen. No. U75-37.

Lack of oath or bond does not render acts under color of office invalid. — Failure of a deputy to take the required oath does not render the deputy's acts taken under color of office to be invalid, inasmuch as notwithstanding the deficiency, the deputy is still a "de facto officer"; the same rule applies if the deficiency is a failure to furnish bond. 1965-66 Op. Att'y Gen. No. 66-211.

Appointment of chief of police as deputy. — Sheriff may appoint chief of police of city within county as deputy

sheriff for purpose of serving process in a suit unless there is something in the terms under which the chief of police was employed prohibiting the chief from accepting other employment. 1962 Op. Att'y Gen. p. 81.

Night watchman for state sanatorium should be deputized by the sheriffs of the two counties in which the property is located in order to have the power to arrest for offenses committed thereon. 1945-47 Op. Att'y Gen. p. 539.

Performance by deputies of acts which may lawfully be performed by sheriff. — Regularly appointed deputy sheriff and persons lawfully performing the duties incumbent upon a posse comitatus may perform such acts as may lawfully be performed by a sheriff. 1969 Op. Att'y Gen. No. 69-75.

Regularly appointed deputy sheriff may perform such acts as may lawfully be performed by sheriff. 1969 Op. Att'y Gen. No. 69-131.

Special deputy sheriff is authorized to investigate collection of taxes. 1969 Op. Att'y Gen. No. 69-131.

Members of emergency squads. — Police intelligence unit should provide that members of emergency squads be qualified as de jure deputy sheriffs in all counties in which the members intend to operate. 1969 Op. Att'y Gen. No. 69-473.

Multi-government emergency squads may combat common disaster, civil disorder, riot, and other emergency situations. 1969 Op. Att'y Gen. No. 69-473.

Prohibitions of § 45-2-2 inapplicable to deputy sheriffs and deputy coroners. — Since both deputy sheriffs and deputy coroners are appointed under O.C.G.A. § 15-16-23 rather than elected, neither is a county officer within the meaning of O.C.G.A. § 45-2-2, and the statute's prohibition against holding more than one county office does not apply. 1981 Op. Att'y Gen. No. U81-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 13, 14.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 20 et seq.

ALR. — Liability of police officer or his bond for injuries or death of third persons resulting from operation of motor vehicle by subordinate, 15 ALR3d 1189.

15-16-24. Liability for misconduct of jailers.

Sheriffs are liable for the misconduct of their jailers as they are liable for their deputies; and persons injured by a jailer have the same option in bringing an action on the jailer's bond that they have in bringing an action on the deputy's bond, provided that the sheriff shall not be liable for such misconduct and no claim or cause of action against the sheriff for such misconduct shall exist unless one of the following conditions exists:

(1) The sheriff personally benefited financially from the act complained of;

(2) The sheriff was personally aware of and had actual knowledge of the act complained of and had actual knowledge that the act was illegal, was contrary to law, or was the breach of a duty imposed by law and either acted to cause or failed to prevent the act complained of; or

(3) The sheriff failed to exercise ordinary care and diligence to prevent the condition or act which proximately caused the injury

complained of. (Orig. Code 1863, § 335; Code 1868, § 396; Code 1873, § 360; Code 1882, § 360; Civil Code 1895, § 4379; Civil Code 1910, § 4913; Code 1933, § 24-2812; Ga. L. 1980, p. 493, § 1; Ga. L. 1982, p. 3, § 15.)

Cross references. — Jails generally, § 42-4-1 et seq.

JUDICIAL DECISIONS

Liability for breach of duty arising out of official capacity. — While this section makes sheriffs liable for the misconduct of jailers, the misconduct referred to is a breach of some duty arising out of official capacity. Tate v. National Sur. Corp., 58 Ga. App. 874, 200 S.E. 314 (1938).

No statute makes chief of police liable for misconduct of police officers. — Contrary to the rule as to the liability of a sheriff for the tortious conduct of the sheriff's deputies in the line of duty, there is no statute that makes a chief of police liable for the tortious conduct of the individual police officers who serves under the chief. Massey v. Perkerson, 129 Ga. App. 895, 201 S.E.2d 830 (1973).

Cited in Drost v. Robinson, 194 Ga. 703, 22 S.E.2d 475 (1942); Fidelity-Phenix Ins. Co. v. Mauldin, 118 Ga. App. 401, 163 S.E.2d 834 (1968); Parris v. Slaton, 131 Ga. App. 92, 205 S.E.2d 67 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Liability for acts or omissions of jailer. — Sheriff of a county is responsible for the county jail and under certain circumstances the sheriff can be liable for the acts or omissions personally of the sheriff's jailer with reference to the treatment of prisoners incarcerated in the jail; the failure to keep someone on duty at the jail at all times could result in liability based on neglect. 1969 Op. Att'y Gen. No. 69-14.

Misconduct of jailers for which sheriffs are liable is breach of some duty arising out of official capacity. 1969 Op. Att'y Gen. No. 69-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 45 et seq.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 54.

ALR. — Liability for death of or injury to prisoner, 46 ALR 94; 50 ALR 268; 61 ALR 569.

15-16-25. Liability for hire received.

Where sheriffs hire property out after it has been levied upon, they are liable to the proper party for the hire received. (Orig. Code 1863, § 339; Code 1868, § 400; Ga. L. 1871-72, p. 51, § 1; Code 1873, § 365; Code 1882, § 365; Civil Code 1895, § 4385; Civil Code 1910, § 4919; Code 1933, § 24-2822.)

JUDICIAL DECISIONS

By use of property, sheriff is liable for hire. Sumner v. Bell, 118 Ga. 240, 44 S.E. 973 (1903).

Cited in Howington v. Wilson, 213 Ga. 664, 100 S.E.2d 726 (1957).

RESEARCH REFERENCES

ALR. — Exception as regards payments to officers of court to rule preventing recovery back of payments made under mistake of law, 111 ALR 637.

15-16-26. Investigation of charges against sheriff; suspension; additional investigations; assumption of sheriff's duties; indictment for felony.

(a) Whenever the Governor determines that an investigation of a sheriff of this state should be made as a result of criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office, he shall appoint two sheriffs who are members of the Georgia Sheriffs' Association who, along with the Attorney General, shall constitute a committee to conduct an investigation. Such sheriffs may be from any two counties in the state other than the county of the sheriff under investigation. The members of any such committee shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with an investigation. The funds necessary to conduct an investigation shall come from the funds appropriated to the executive branch of state government.

(b) Any member of the committee shall be authorized to administer oaths to any witness before the committee. The committee shall make a report of its investigation to the Governor within 30 days from the date of the appointment of both sheriff members by the Governor.

(c) If the committee recommends the suspension of the sheriff, the Governor shall be authorized to suspend the sheriff for a period of up to 60 days. In any case where a sheriff has been suspended for 60 days, the Governor may extend the period of suspension for an additional 30 days. Upon such recommendation, the Governor shall also be authorized to request the district attorney of the county of the sheriff's residence to bring a removal petition against the sheriff pursuant to subsection (b) of Code Section 15-16-10 based upon the evidence reported by the committee. In the event that the Governor determines that further investigation should be made, he or she may then order additional investigation by the committee, by the Georgia Bureau of Investigation, by other law enforcement agencies of this state, or by any special committee appointed by the Governor for such purpose.

(d) Except as provided in subsection (e) of this Code section, the chief judge of the superior court of the county of the sheriff's residence shall

appoint a person who meets the qualifications for sheriffs pursuant to Code Section 15-16-1 to assume the duties and responsibilities of the office of sheriff during any period of suspension.

(e) Upon indictment for a felony, the provisions of Code Section 45-5-6 shall apply.

(f) The remedy provided by this Code section is intended to be cumulative of other remedies available on the subject and is not intended to repeal such remedies. (Ga. L. 1968, p. 1248, §§ 1-4; Ga. L. 1982, p. 425, § 1; Ga. L. 1984, p. 1279, § 2; Ga. L. 2012, p. 173, § 2-8/HB 665; Ga. L. 2013, p. 141, § 15/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, deleted "and Code Section 15-16-26" following "Code Section 15-16-10" in the third sentence of subsection (c).

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Cited in Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003); DeKalb County Sch. Dist. v. Ga. State Bd. of Educ., 294 Ga. 349, 751 S.E.2d 827 (2013).

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Mayor and council without authority to investigate. — Mayor and council of the consolidated government of a city of this state do not have the authority to investigate the office of sheriff of the consolidated government. 1975 Op. Att'y Gen. No. U75-36.

RESEARCH REFERENCES

ALR. — Confidentiality of proceedings or reports of judicial inquiry board or commission, 5 ALR4th 730.

15-16-27. Deposit of cash bonds and reserves of professional bondspersons in interest-bearing accounts; disposition of interest.

(a) Unless transferred to the appropriate clerk of court, the sheriff shall deposit cash bonds held by the sheriff in one or more interest-bearing trust accounts in investments authorized by Code Section 36-80-3 or by Chapter 83 of Title 36.

(b) The financial institution in which the funds are deposited shall remit, after service charges or fees are deducted, the interest generated by such funds directly to the Georgia Superior Court Clerks' Cooperative Authority in accordance with the provisions of subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia Public Defender Council. With each remittance, the financial institution shall send a statement showing the name of the county, deposits

and withdrawals from the account or accounts, interest paid, service charges or fees of the bank or other depository, and the net remittance.

(c) In counties where the service charges or fees of the bank or depository would exceed the interest received from funds subject to this Code section, the sheriff shall be exempt from subsections (a) and (b) of this Code section. In such counties, the sheriff shall send a written notice to the Georgia Superior Court Clerks' Cooperative Authority. (Code 1933, § 24-2813.1, enacted by Ga. L. 1982, p. 991, § 1; Code 1981, § 15-16-27, enacted by Ga. L. 1982, p. 991, § 2; Ga. L. 1983, p. 3, § 12; Ga. L. 1992, p. 1689, § 1; Ga. L. 1993, p. 1673, § 1; Ga. L. 1994, p. 1179, § 1; Ga. L. 1999, p. 81, § 15; Ga. L. 2003, p. 191, § 6; Ga. L. 2008, p. 846, § 9/HB 1245; Ga. L. 2015, p. 519, § 8-6/HB 328.)

The 2015 amendment, effective July 1, 2015, deleted "Standards" following "Defender" at the end of the first sentence of subsection (b).

Editor's notes. — Ga. L. 1993, p. 1673, § 2, provides that this Code section applies "to cash bonds and cash reserves of professional bondspersons received by sheriffs on or after July 1, 1993; provided, however, that on and after July 1, 1993, sheriffs governed by this Act shall exercise their discretion in determining whether to deposit in accordance with this Act cash bonds and cash reserves of professional bondspersons held by the sheriff which were received by the sheriff before July 1, 1993."

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 105 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Subsection (a). — Since O.C.G.A. § 15-16-27(a) specifies "cash bonds held by the sheriff," the section does not apply to bonds posted by professional bondpersons. 1999 Op. Att'y Gen. No. U99-9.

Interest remitted to Georgia Indigent Defense Council. — When sheriffs hold cash bonds, the funds must be placed in interest-bearing trust accounts, and the interest remitted to the Georgia Indigent Defense Council. The requirement does not apply to all funds held by sheriffs or to any funds held by other law enforcement agencies. 1997 Op. Att'y Gen. No. U97-21.

Interest from cash bonds transferred by a sheriff to the appropriate clerk of court is not required to be remitted to the Georgia Indigent Defense Council unless the statute governing the particular clerk requires that the clerk remit interest to the Council. 1999 Op. Att'y Gen. No. U99-9.

15-16-28. Creation of merit board; appeals from disciplinary actions.

In any county there may be created by local Act of the General Assembly a merit board to hear and decide appeals from disciplinary actions against deputies and other employees of the sheriff of the county; provided, however, that no such merit board or appeals procedure shall become effective until approved and adopted by the sheriff. (Code 1981, § 15-16-28, enacted by Ga. L. 1984, p. 536, § 1.)

ARTICLE 2

SHERIFF EMERITUS

15-16-40. Honorary office created; qualifications; certificate; effect.

(a) There is created the honorary office of sheriff emeritus of the State of Georgia. Any sheriff of any county of this state who retires under honorable conditions after having attained the age of 75 years and after having served as sheriff for 45 or more years shall automatically hold the honorary office of sheriff emeritus of the State of Georgia.

(b) Any person holding honorary office as sheriff emeritus of the State of Georgia shall upon application to the Secretary of State be issued a special certificate evidencing such honorary office.

(c) The honorary office of sheriff emeritus of the State of Georgia shall not constitute the holding of public office or public employment for the purposes of any other law of this state. (Code 1981, § 15-16-40, enacted by Ga. L. 1988, p. 585, § 1.)

ARTICLE 3

SHERIFF OFFICES' NOMENCLATURE

15-16-50. Short title.

This article shall be known and may be cited as the "Sheriff Offices' Nomenclature Act of 1997." (Code 1981, § 15-16-50, enacted by Ga. L. 1997, p. 1496, § 1.)

15-16-51. Use of sheriff's office name.

It is declared to be contrary to the health, safety, and public welfare of the people of this state for any individual or organization to act in a manner which would mislead the public into believing that a member of the public is dealing with any sheriff's office or with a member thereof when in fact the individual or organization is not the sheriff's office or a member thereof. Furthermore, the sheriff's office, which has provided quality law enforcement services to the citizens of this state, has established a name for excellence in its field. This name should be protected for the sheriff's office, its members, and the citizens of this state. Therefore, no person or organization should be allowed to use any sheriff office's name or any term used to identify the sheriff's office or its members without the express permission of the sheriff. The provisions of this article are in furtherance of the promotion of this policy. (Code

1981, § 15-16-51, enacted by Ga. L. 1997, p. 1496, § 1; Ga. L. 1999, p. 81, § 15.)

15-16-52. Definitions.

As used in this article, the term:

(1) "Badge" means any official badge used in the past or present by members of any sheriff's office.

(2) "Emblem" means any official patch or other emblem worn currently or formerly or used by the sheriff's office to identify the office or its employees.

(3) "Office" means any sheriff's office.

(4) "Person" means any person, corporation, organization, or political subdivision of this state.

(5) "Sheriff" means the sheriff of any county in this state.

(6) "Willful violator" means any person who knowingly violates the provisions of this article. Any person who violates this article after being advised in writing by the sheriff that such person's activity is in violation of this article shall be considered a willful violator and shall be considered in willful violation of this article. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and in willful violation of this article, unless upon learning of the violation he or she immediately terminates the agency or other relationship with such violator. (Code 1981, § 15-16-52, enacted by Ga. L. 1997, p. 1496, § 1.)

15-16-53. Unauthorized use of sheriff's office name a violation.

Whoever, except with the express written permission of the sheriff, knowingly uses words pertaining to such sheriff's office in connection with the planning, conduct, or execution of any solicitation; advertisement, circular, political endorsement, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production in a manner reasonably calculated to convey the impression that such solicitation; advertisement, circular, political endorsement, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production is approved, endorsed, or authorized by or associated with the sheriff's office shall be in violation of this article. (Code 1981, § 15-16-53, enacted by Ga. L. 1997, p. 1496, § 1.)

15-16-54. Symbol, seal, or badge of sheriff's office; unauthorized use.

The sheriff, at his or her sole discretion, shall determine any symbol, seal, badge, or other nomenclature to be used by the sheriff's office so long as the use of any such nomenclature is not in violation of any other state or federal law. Any person who uses or displays any current or historical symbol, including any emblem, seal, or badge, used by the sheriff's office in connection with the planning, conduct, or execution of any solicitation; advertisement, circular, political endorsement, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production in a manner reasonably calculated to convey the impression that such solicitation; advertisement, circular, political endorsement, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production is approved, endorsed, or authorized by or associated with the office without written permission from the sheriff shall be in violation of this article. (Code 1981, § 15-16-54, enacted by Ga. L. 1997, p. 1496, § 1.)

JUDICIAL DECISIONS

Cited in Hill v. Clayton County Bd. of Comm'rs, 283 Ga. App. 15, 640 S.E.2d 638 (2006), *overruled on other grounds,* Mayor & Aldermen of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189 (Ga. 2012).

15-16-55. Requests to use sheriff's office symbols.

Any person wishing permission to use either sheriff's office nomenclature or symbols may request such permission in writing to the chief deputy sheriff or other person designated by the sheriff. Within 15 calendar days after receipt of the request, the chief deputy sheriff shall serve notice on the requesting party of his or her recommendation to the sheriff on whether the person may use the nomenclature or the symbol. Within 30 calendar days after receipt of the recommendation of the chief deputy sheriff, the sheriff shall serve notice on the requesting party of the decision on whether the person may use the nomenclature or the symbol. If the sheriff does not respond within the 30 day time period, then the request is presumed to have been denied. The grant of permission under this Code section or Code Section 15-16-53 or 15-16-54 shall be in the discretion of the sheriff under such conditions as established by the sheriff. (Code 1981, § 15-16-55, enacted by Ga. L. 1997, p. 1496, § 1.)

15-16-56. Injunction to restrain violation.

Whenever there shall be an actual or threatened violation of Code Section 15-16-53 or 15-16-54, the sheriff shall have the right to apply to

the superior court of the county of residence of the violator for an injunction to restrain the violation. (Code 1981, § 15-16-56, enacted by Ga. L. 1997, p. 1496, § 1.)

15-16-57. Civil penalty; attorney's fees.

In addition to any other relief or sanction for a violation of Code Section 15-16-53 or 15-16-54, where the violation is willful, the sheriff shall be entitled to collect a civil penalty in the amount of $500.00 for each violation. Further, when there is a finding of willful violation, the sheriff shall be entitled to recover reasonable attorney's fees for bringing any action against the violator. The sheriff shall be entitled to seek civil sanctions in the superior court in the county of residence of the violator. (Code 1981, § 15-16-57, enacted by Ga. L. 1997, p. 1496, § 1.)

15-16-58. Damages recoverable for unauthorized use of symbols.

Any person who has given money or any other item of value to another person due in part to such person's use of a sheriff's office nomenclature or symbols in violation of this article may maintain a suit for damages against the violator. Where it is proven that the violation was willful, the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney's fees. (Code 1981, § 15-16-58, enacted by Ga. L. 1997, p. 1496, § 1.)

15-16-59. Violation a felony; penalty.

Any person who violates the provisions of this article shall be guilty of a felony and upon conviction thereof shall be subject to a fine of not less than $1,000.00 or more than $5,000.00 or to imprisonment for not less than one or more than five years, or both. Each violation shall constitute a separate offense. (Code 1981, § 15-16-59, enacted by Ga. L. 1997, p. 1496, § 1.)

CHAPTER 17

CONSTABLES

15-17-1 through 15-17-21.

Reserved. Repealed by Ga. L. 1983, p. 884, § 4-2, effective July 1, 1983.

Editor's notes. — This chapter was based on Laws 1799, Cobb's 1851 Digest, p. 335; Laws 1811, Cobb's 1851 Digest, pp. 201, 645, 646; Laws 1816, Cobb's 1851 Digest, p. 204; Laws 1818, Cobb's 1851 Digest, p. 206; Laws 1820, Cobb's 1851 Digest, p. 649; Laws 1829, Cobb's 1851 Digest, p. 213; Laws 1830, Cobb's 1851 Digest, p. 214; Ga. L. 1857, p. 49, § 6; Orig. Code 1863, §§ 436, 438-442, 446, 447, 451; Ga. L. 1877, p. 83, § 2; Ga. L. 1878-79, p. 191, § 2; Ga. L. 1882-83, p. 110, § 2; Ga. L. 1897, p. 97, § 1; Ga. L. 1906, p. 45, §§ 1, 2; Ga. L. 1909, p. 182, § 1; Ga. L. 1912, p. 74, § 1; Ga. L. 1918, p. 124, §§ 1-4; Ga. L. 1919, p. 101, § 1; Ga. L. 1947, p. 1449; Ga. L. 1958, p. 195, § 1; Ga. L. 1967, p. 610, § 1; Ga. L. 1969, p. 351, §§ 1-3; Ga. L. 1969, p. 875, §§ 1, 2; Ga. L. 1978, p. 1693, § 1; Ga. L. 1981, p. 496, §§ 1, 2; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 15. For current provisions, see Code Section 15-10-100 et seq.

CHAPTER 18

PROSECUTING ATTORNEYS

Article 1

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Cross references. — District attorneys generally, Ga. Const. 1983, Art. VI, Sec. VIII. Role of prosecuting attorney in delinquency proceedings, § 15-11-473. Compensation and allowances for district attorneys, § 45-7-1 et seq.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For note on the 1995 amendments and enactments of Code sections in this article, see 12 Ga. St. U.L. Rev. 158 (1995). For note on 2000 amendments of O.C.G.A. §§ 15-18-14, 15-18-14.1, 15-18-17, and 15-18-20, see 17 Ga. St. U.L. Rev. 80 (2000).

15-18-1. District attorney as successor to solicitor-general.

The district attorney is the successor to the office of solicitor-general as it existed prior to July 1, 1977. (Code 1933, § 24-2904, enacted by Ga. L. 1977, p. 1257, § 1.)

Editor's notes. — Ga. L. 1970, p. 938, designates the District Attorneys Association of Georgia as the appropriate agency to accept and expend federal and private funds for the purpose of enhancing the proficiency of the various prosecuting officials of the state.

Ga. L. 1996, p. 748, changed the titles of the officials formerly known as solicitors of the state courts to solicitors-general of the state courts. This is an office different from the one referred to in this Code section.

JUDICIAL DECISIONS

Cited in Mach v. State, 109 Ga. App. 154, 135 S.E.2d 467 (1964).

15-18-2. Oath of office.

The district attorney shall take the following oath:

"I do swear that I will faithfully and impartially and without fear, favor, or affection discharge my duties as district attorney and will take only my lawful compensation. So help me God."

(Orig. Code 1863, § 347; Code 1868, § 408; Code 1873, § 373; Code 1882, § 373; Civil Code 1895, § 4388; Civil Code 1910, § 4922; Code 1933, § 24-2902.)

RESEARCH REFERENCES

ALR. — Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law, 6 ALR3d 562.

15-18-3. Qualifications.

To be eligible to fill the office of district attorney, a person must:

(1) Have been a resident citizen of this state three years just preceding his election or appointment;

(2) Permanently reside in the circuit at the time of his election or appointment;

(3) Have attained the age of 25 years;

(4) Have been duly admitted and licensed to practice law in the superior courts for at least three years; and

(5) If previously disbarred from the practice of law, have been reinstated as provided by law. (Laws 1841, Cobb's 1851 Digest, p. 1122; Laws 1850, Cobb's 1851 Digest, p. 1036; Code 1863, § 349; Code 1868, § 410; Code 1873, § 375; Ga. L. 1877, p. 13, § 1; Code 1882, § 375; Civil Code 1895, § 4390; Civil Code 1910, § 4924; Code 1933, § 24-2901; Ga. L. 1964, p. 362, § 1.)

Cross references. — Further provisions as to qualifications for district attorneys, Ga. Const. 1983, Art. VI, Sec. VIII, Para. I.

JUDICIAL DECISIONS

Lawful practice defined. — Three-year practice requirement, one of the qualifications for district attorney, of Ga. Const. 1976, Art. VI, Sec. XIII, Para. I (see now Ga. Const. 1983, Art. VI, Sec. VIII, Para. I), and this section contemplates lawful practice and lawful practice is defined as the practice of law as an active member of the State Bar of Georgia in good standing. Whitmer v. Thurman, 241 Ga. 569, 247 S.E.2d 104 (1978).

Denial of eligibility read in light of constitutional requirements. — Denial of eligibility to one "who has not been duly admitted and licensed to practice law in the superior courts for at least three years" must be read in the light of the higher requirement of Ga. Const. 1945, Art. VI, Sec. XIII, Para. I (see now Ga. Const. 1983, Art. VI, Sec. VIII, Para. I). Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, cert. denied, 396 U.S. 939, 90 S. Ct. 369, 24 L. Ed. 2d 240 (1969).

Intent of legislature when the legislature imposed the three-year practice as a requirement for the district attorney post was to ensure that the individuals who were elected to the office of district attorney would be experienced in the practice of law before the courts in which they would be required to perform their functions as district attorneys. It would be contrary to this intent to allow individuals who have not been licensed to practice before the superior courts to include their practice time in other states as partial satisfaction of Ga. Const. 1976, Art. VI, Sec. XIII, Para. I (see now Ga. Const. 1983, Art. VI, Sec. VIII, Para. I) and this section. Whitmer v. Thurman, 241 Ga. 569, 247 S.E.2d 104 (1978).

Three-year practice requirement does not include legal practice in other states. Whitmer v. Thurman, 241 Ga. 569, 247 S.E.2d 104 (1978).

No eligibility for office if attorney never registers nor pays license fee. — If an attorney never registers with nor pays any license fee to the State Bar, any practice of law which the attorney may have engaged in is unlawful and the attorney is ineligible for the office of district attorney. Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, cert. denied, 396 U.S. 939, 90 S. Ct. 369, 24 L. Ed. 2d 240 (1969).

Cited in Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964).

OPINIONS OF THE ATTORNEY GENERAL

Three-year practice of law requirement relates solely to the date of election rather than the date of qualification; therefore, a candidate for the office of

district attorney must meet the three-year practice of law requirement at the time of such candidate's election rather than at the time of such candidate's qualification for the office. 1978 Op. Att'y Gen. No. 78-20.

Assistant must meet qualification to fill office of district attorney. — Assistant district attorney may be appointed district attorney pro tempore if the assistant district attorney meets the qualifications provided for in this section and resigns from the present position as assistant district attorney. 1977 Op. Att'y Gen. No. U77-50.

"Competent attorney" defined. — "Competent attorney" under former Code 1933, §§ 24-2913 and 24-2914 (see now O.C.G.A. § 15-18-5) would be one who meets the qualifications for the office of district attorney set forth in former Code 1933, § 24-2901 (see now O.C.G.A. § 15-18-3). 1977 Op. Att'y Gen. No. U77-50.

Third-year practice does not affect eligibility for office of district attorney. — Third-year law student who served as a legal assistant to a district attorney pursuant to former Code 1933, § 9-401.2 (see now O.C.G.A. § 15-18-22) did not thereby become "duly admitted and licensed to practice law in the superior courts" for the purposes of determining eligibility to the office of district attorney under former Code 1933, § 24-2901 (see now O.C.G.A. § 15-18-3). 1976 Op. Att'y Gen. No. 76-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 7 et seq.

ALR. — Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law, 6 ALR3d 562.

15-18-4. Effect of attachment of county of residence to different circuit.

A person who has been appointed or elected district attorney of any circuit cannot be deprived of his office by the attachment of the county in which he resides to a different judicial circuit. In such a case, the district attorney shall continue to discharge the duties of his office as though he resided in the circuit. (Orig. Code 1863, § 350; Code 1868, § 411; Code 1873, § 376; Code 1882, § 376; Civil Code 1895, § 4391; Civil Code 1910, § 4925; Code 1933, § 24-2907.)

15-18-4.1. District attorney performing ordered military duty.

(a) Any district attorney who is performing ordered military duty, as defined in Code Section 38-2-279, shall be eligible for reelection in any election, primary or general, which may be held to elect a successor for the next term of office, and may qualify in absentia as a candidate for reelection to such office.

(b) Where the giving of written notice of candidacy is required, any district attorney who is performing ordered military duty may deliver such notice by mail or messenger to the proper elections official. Any other act required by law of a candidate for public office may, during the time such official is on ordered military duty, be performed by an agent designated in writing by the absent public official. (Code 1981, § 15-18-4.1, enacted by Ga. L. 1991, p. 135, § 1.)

15-18-5. Appointment of substitute for absent or disqualified district attorney.

(a) When a district attorney's office is disqualified from interest or relationship to engage in a prosecution, the district attorney shall notify the Attorney General of the disqualification. Upon receipt of such notification, the Attorney General shall:

(1) Request the services of and thereafter appoint a district attorney, a solicitor-general, or a retired prosecuting attorney as provided in Code Section 15-18-30;

(2) Designate an attorney from the Department of Law; or

(3) Appoint a competent attorney to act as district attorney pro tempore in place of the district attorney.

(b) A private attorney acting as district attorney pro tempore pursuant to paragraph (3) of subsection (a) of this Code section is subject to all laws and regulations established pursuant to Code Section 15-18-19 governing district attorneys. Such private attorney shall receive the same compensation from state funds appropriated for the operations of the district attorneys at the same rate as the district attorney during the term of such appointment and shall incur the same penalties in the discharge of the duties of said office.

(c) Nothing in this Code section shall affect Code Section 45-15-30.

(d) The appointment of the district attorney pro tempore shall specify in writing the court or courts to which the appointment applies, the county or counties where located, the time period covered, and the name of the case or cases to which such appointment shall apply. A copy of the appointment shall be filed with the clerk of court and copies shall be provided to the presiding judge and the Prosecuting Attorneys' Council of the State of Georgia and opposing counsel in any action affected by such order. An order appointing a private attorney pursuant to this Code section shall also specify whether such attorney will serve on a full-time or part-time basis and any restrictions which may apply to such attorney's private practice of law during the term of such appointment. Private attorneys who serve on a part-time basis shall be compensated at an hourly rate determined by the Prosecuting Attorneys' Council of the State of Georgia based on the annual salary of district attorneys paid from state funds. The Prosecuting Attorneys' Council of the State of Georgia shall establish such procedures or guidelines as may be necessary to ensure proper accountability of any funds paid to a private attorney pursuant to this Code section.

(e) A district attorney or solicitor-general who is designated as a district attorney pro tempore, or any assistant designated by such

district attorney pro tempore to prosecute such case or cases, or an employee of the Department of Law shall not receive any additional compensation for such services. The actual expenses incurred by the district attorney pro tempore or members of the district attorney pro tempore's staff shall be reimbursed in the same manner and by the same funding source as is provided by law for such personnel when they are performing official duties, provided that, in the case of nonstate paid personnel, the actual expenses incurred shall be reimbursed by the county in which the said district attorney pro tempore is acting at the same rate as provided in Code Section 15-18-12 for district attorneys. Any court costs, filing costs, witness fees, costs of reporting and preparing transcripts of records, and any other expenses incurred for such services shall be paid as provided by law.

(f) If a disqualified district attorney fails or refuses to notify the Attorney General as provided in subsection (a) of this Code section, the presiding judge may notify the Attorney General.

(g) Any order entered by a court disqualifying a district attorney's office from engaging in the prosecution shall specify the legal basis for such order. The district attorney may, on behalf of the state and prior to the defendant in a criminal case being put in jeopardy, apply for a certificate of immediate review as provided in Code Section 5-7-2, and such order shall be subject to appellate review as provided in Chapter 7 of Title 5. (Laws 1799, Cobb's 1851 Digest, p. 574; Code 1863, §§ 358, 359; Code 1868, §§ 419, 420; Code 1873, §§ 384, 385; Code 1882, §§ 384, 385; Civil Code 1895, § 4395; Penal Code 1895, §§ 805, 806; Civil Code 1910, § 4929; Penal Code 1910, §§ 805, 806; Code 1933, §§ 24-2913, 24-2914; Ga. L. 1977, p. 1257, § 7; Ga. L. 2002, p. 1211, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, "full-time" was substituted for "full" in the third sentence of subsection (d).

JUDICIAL DECISIONS

Illness may cause district attorney to be absent. — Sickness or any other malady, bodily or mental, may cause the solicitor general (now district attorney) to be absent. Mitchell v. State, 22 Ga. 211, 68 Am. Dec. 493 (1857); Butts v. State, 90 Ga. 450, 16 S.E. 96 (1892).

City court judge may appoint solicitor (now district attorney) pro tem. Horton v. State, 11 Ga. App. 33, 74 S.E. 559 (1912); Holt v. State, 11 Ga. App. 34, 74 S.E. 560 (1912).

No interference with discretion of court unless abused. — Discretion of the court in appointing a solicitor general (now district attorney) pro tem will not be interfered with unless the court's discretion is abused. Statham v. State, 41 Ga. 507 (1871).

Propriety of appointment is largely in discretion of trial court and the appellate courts will not interfere with the discretion unless the court's discretion is abused. Mach v. State, 109 Ga. App. 154, 135 S.E.2d 467 (1964).

Appointee is officer de facto. — When appointment is made, appointee is officer de facto for any official purpose,

and the appointee's acts are legal, even if there be some error in the appointment. Mach v. State, 109 Ga. App. 154, 135 S.E.2d 467 (1964).

"District attorney pro tempore." — Attorney General or members of the attorney's staff did not act as a "district attorney pro tempore" subject to a grand jury's investigation when under requisition of the governor to serve as a state prosecutor. In re Floyd County Grand Jury Presentments for May Term 1996, 225 Ga. App. 705, 484 S.E.2d 769 (1997).

Appointment of private attorney as district attorney pro tem. — Trial court did not err when the court appointed a private attorney to participate in a re-sentencing hearing as the district attorney pro tem, especially if the attorney was a former assistant district attorney and had represented the state during the defendant's original trial. Smith v. State, 234 Ga. App. 213, 505 S.E.2d 858 (1998).

Appointed attorney not precluded from private practice. — Attorney appointed by a presiding judge as a part-time district attorney pro tempore assigned pursuant to O.C.G.A. § 15-18-27(a) to prosecute criminal acts allegedly committed by a district attorney and/or the district attorney's staff is not precluded from the private practice of criminal law for the duration of the appointment. State v. Redd, 243 Ga. App. 809, 534 S.E.2d 473 (2000).

Retained counsel to assist in trial. — Solicitor general (now district attorney) may retain counsel to assist in trial of case; it is not necessary that the retained counsel's services be commanded by the presiding judge. Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956).

District attorney may assist in trial in another circuit. — Solicitor general (now district attorney) in a judicial circuit of this state is not disqualified by the provisions of Ga. Const. 1976, Art. VI, Sec. XI, Para. II (see now Ga. Const. 1983, Art. VI, Sec. VIII, Para. I), former Code 1933, §§ 24-2908, 24-2913, and 24-2914 (see now O.C.G.A. §§ 15-18-5 and 15-18-6), or by any other law to appear before the courts of a different judicial circuit at the request of the prosecution on a trial for murder, and assist the solicitor general (now district attorney) of the latter circuit in the prosecution, notwithstanding the last mentioned officer is not indisposed, or disqualified from interest or relationship, or absent from the circuit, and such assistance is not requisitioned by the presiding judge. Floyd v. State, 182 Ga. 549, 186 S.E. 556 (1936).

Solicitor general (now district attorney) of another circuit may, at the request of the prosecution, appear and assist in the trial although not requisitioned by the judge, even though the solicitor general (now district attorney) of the trial circuit is not indisposed. Hannah v. State, 212 Ga. 313, 92 S.E.2d 89 (1956).

Oath of assisting prosecuting counsel is not required. Lindsay v. State, 138 Ga. 818, 76 S.E. 369 (1912).

Phrase "disqualified from interest" construed. — Phrase "disqualified from interest," used in this section, means a "personal interest," and a solicitor (now district attorney) is not disqualified from personal interest in a case if the solicitor was not acting in the solicitor's personal or individual character, or for the solicitor's personal or individual interest, but in the solicitor's character as an officer of the law specially charged by statute to perform this particular duty. Scott v. State, 53 Ga. App. 61, 185 S.E. 131 (1936), aff'd, 184 Ga. 164, 190 S.E. 582 (1937); State v. Davis, 159 Ga. App. 537, 284 S.E.2d 51 (1981).

Public prosecutor is necessarily partisan in case. — While the prosecuting officer should see that no unfair advantage is taken of the accused, yet the prosecuting officer is not a judicial officer; the public prosecutor is necessarily a partisan in the case, and if the prosecutor were compelled to proceed with the same circumspection as the judge and jury there would be an end to the conviction of criminals. Scott v. State, 53 Ga. App. 61, 185 S.E. 131 (1936), aff'd, 184 Ga. 164, 190 S.E. 582 (1937).

Disqualifying interest or relationship not defined. — While the Code recognizes a disqualification of a solicitor (now district attorney) because of interest or relationship, it does not define what interest or what relationship will disqualify the solicitor. Scott v. State, 53 Ga. App.

61, 185 S.E. 131 (1936), aff'd, 184 Ga. 164, 190 S.E. 582 (1937).

Personal interest may disqualify. — If prosecuting attorney has personal interest, it may disqualify the prosecuting attorney. Scott v. State, 53 Ga. App. 61, 185 S.E. 131 (1936), aff'd, 184 Ga. 164, 190 S.E. 582 (1937).

Involvement in offense under investigation. — If the prosecuting attorney personally is involved in the offense under investigation, the prosecuting attorney should not be allowed to advise the grand jury and secure a bill. Scott v. State, 53 Ga. App. 61, 185 S.E. 131 (1936), aff'd, 184 Ga. 164, 190 S.E. 582 (1937).

Representation of victim in divorce proceeding involving accused. — Public policy prohibits a district attorney from prosecuting a case, even though the district attorney does not actually try the case personally, while representing the victim of the alleged criminal act in a divorce proceeding involving the accused. Davenport v. State, 157 Ga. App. 704, 278 S.E.2d 440 (1981).

Relationship to stockholders. — Solicitor general (now district attorney), related to stockholders in a corporation which owned the stock of another corporation alleged to have been cheated and defrauded, was not disqualified to appear before the grand jury to obtain such indictment, or to prosecute the case before a jury, it not appearing that in doing so the solicitor general was actuated by personal interest in the matter. Scott v. State, 53 Ga. App. 61, 185 S.E. 131 (1936), aff'd, 184 Ga. 164, 190 S.E. 582 (1937).

No interest found. — Solicitor general (now district attorney), though depositor of bank, may prosecute director thereof. Stapleton v. State, 19 Ga. App. 36, 90 S.E. 1029 (1916); Spence v. State, 20 Ga. App. 61, 92 S.E. 555, cert. denied, 20 Ga. App. 832, 92 S.E. 555 (1917).

Interest is absent if solicitor general (now district attorney) signed indictment in that capacity, and then signed as prosecutor. Pinkney v. State, 22 Ga. App. 105, 95 S.E. 539 (1918).

Cited in Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964); In re Pending Cases, 234 Ga. 264, 215 S.E.2d 473 (1975); Carroll v. State, 147 Ga. App. 332, 248 S.E.2d 702 (1978); Rutledge v. State, 245 Ga. 768, 267 S.E.2d 199 (1980); McGraw v. State, 199 Ga. App. 389, 405 S.E.2d 53 (1991); Cramer v. Spalding County, 261 Ga. 570, 409 S.E.2d 30 (1991); McPherson v. State, 274 Ga. 444, 553 S.E.2d 569 (2001).

OPINIONS OF THE ATTORNEY GENERAL

"Competent attorney" defined. — "Competent attorney" under former Code 1933, §§ 24-2913 and 24-2914 (see now O.C.G.A. § 15-18-5) would be one who meets the qualifications for the office of district attorney set forth in former Code 1933, § 24-2901 (see now O.C.G.A. § 15-18-3). 1977 Op. Att'y Gen. No. U77-50.

District attorney still paid by state if substitute appointed. — Once a district attorney pro tempore has been appointed, the district attorney is still paid by the state if the district attorney has not resigned or abandoned that office. 1977 Op. Att'y Gen. No. U77-50.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, §§ 16, 17.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 81 et seq.

ALR. — Illness or incapacity of judge, prosecuting officer, or prosecution witness as justifying delay in bringing accused speedily to trial — state cases, 78 ALR3d 297.

Validity, under state law, of appointment of independent special prosecutor to handle political or controversial prosecutions or investigations of persons other than regular prosecutor, 84 ALR3d 29.

Validity, under state law, of appointment of special prosecutor where regular prosecutor is charged with, or being investigated for, criminal or impeachable of-

fense, 84 ALR3d 115.

Appealability of state court's order granting or denying motion to disqualify attorney, 5 ALR4th 1251.

Disqualification or recusal of prosecuting attorney because of relationship with alleged victim or victim's family, 12 ALR5th 909.

Disqualification of prosecuting attorney in state criminal case on account of relationship with accused, 42 ALR5th 581.

What circumstances justify disqualification of prosecutor in federal criminal case, 110 ALR Fed 523.

15-18-6. Duties of district attorney.

The duties of the district attorneys within their respective circuits are:

(1) To attend each session of the superior courts unless excused by the judge thereof and to remain until the business of the state is disposed of;

(2) To attend on the grand juries, advise them in relation to matters of law, and swear and examine witnesses before them;

(3) To administer the oaths the laws require to the grand and trial jurors and to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the courts as he may require;

(4) To draw up all indictments or presentments, when requested by the grand jury, and to prosecute all indictable offenses;

(5) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 and to prosecute or defend any other civil action in the prosecution or defense of which the state is interested, unless otherwise specially provided for;

(6) To attend before the appellate courts when any criminal case emanating from their respective circuits is tried, to argue the same, and to perform any other duty therein which the interest of the state may require;

(7) To advise law enforcement officers concerning the sufficiency of evidence, warrants, and similar matters relating to the investigation and prosecution of criminal offenses;

(8) To collect all money due the state in the hands of any escheators and to pay it over to the educational fund, if necessary, compelling payment by rule or order of court or other legal means;

(9) To collect all claims of the state which they may be ordered to collect by the state revenue commissioner and to remit the same within 30 days after collection; and on October 1 of every year to report to the state revenue commissioner the condition of the claims in their hands in favor of the state, particularly specifying:

(A) The amounts collected and paid, from what sources received and for what purposes, and to whom paid;

(B) What claims are unpaid and why;

(C) What judgments have been obtained, when, and in what court; and

(D) What actions are instituted, in what courts, and their present progress and future prospects;

(10) To assist victims and witnesses of crimes through the complexities of the criminal justice system and ensure the victims of crimes are apprised of the rights afforded them under the law; and

(11) To perform such other duties as are or may be required by law or which necessarily appertain to their office. (Laws 1799, Cobb's 1851 Digest, p. 574; Laws 1823, Cobb's 1851 Digest, p. 1025; Laws 1828, Cobb's 1851 Digest, p. 1027; Laws 1836, Cobb's 1851 Digest, p. 254; Laws 1845, Cobb's 1851 Digest, p. 452; Ga. L. 1853-54, p. 107, § 2; Code 1863, § 351; Code 1868, § 412; Code 1873, § 377; Code 1882, § 377; Civil Code 1895, § 4392; Penal Code 1895, § 798; Civil Code 1910, § 4926; Penal Code 1910, § 798; Code 1933, § 24-2908; Ga. L. 1984, p. 842, § 1; Ga. L. 1995, p. 394, § 1; Ga. L. 1997, p. 1319, § 1; Ga. L. 2012, p. 53, § 1/SB 352.)

Cross references. — Constitutional duties, Ga. Const. 1983, Art. VI, Sec. VIII, Para. I. Indictments and accusations generally, § 17-7-50 et seq. Authority of district attorney to request assistance of Georgia Bureau of Investigation to investigate criminal matters, § 35-3-13.

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B.J. 27 (2008).

JUDICIAL DECISIONS

District attorneys performing duties are immune in civil cases. — District attorneys who send a letter to the parole board describing aspects of crimes, giving their opinion, and including an autobiographical manuscript detailing a murder are protected by the same immunity in civil cases which is applicable to judges, provided their acts are within the scope of their jurisdiction and intimately associated with the judicial phase of the criminal process. Mosier v. State Bd. of Pardons & Paroles, 213 Ga. App. 545, 445 S.E.2d 535 (1994), cert. denied, 5 U.S. 1040, 115 S. Ct. 1409, 131 L. Ed. 2d 295 (1995).

District attorney performs duties to subserve public justice. — Solicitor general (now district attorney) draws the bill of indictment and examines the witnesses, not with a view to the interest of any client, but alone to subserve public justice. Scott v. State, 53 Ga. App. 61, 185 S.E. 131 (1936), aff'd, 184 Ga. 164, 190 S.E. 582 (1937).

Limits on prosecutor's presentation of case. — Prosecutor's office is quasi-judicial, and, while it is the prosecutor's duty, if the prosecutor honestly believes that the evidence shows the guilt of the accused, to insist upon this view before the jury, and to use in the prosecutor's argument all the prosecutor's ability and skill in presenting the case as made by the pleadings and the evidence, still it is under no circumstances the prosecutor's duty either to go outside of the case, and state facts not in evidence, or to

appeal to the passions or prejudices of the jury. Cliett v. State, 46 Ga. App. 315, 167 S.E. 610 (1933).

County not liable for district attorney's unconstitutional decisions. — Under Georgia law, the district attorney is a state rather than a county official. Therefore, a county cannot be held liable in a federal civil rights action for a district attorney's allegedly unconstitutional prosecutorial decisions. Owens v. Fulton County, 690 F. Supp. 1024 (N.D. Ga. 1988), aff'd, 877 F.2d 947 (11th Cir. 1989).

District attorney's function as calendar clerk not unconstitutional. — Internal Operating Procedure 2000-3 of the Appalachian Judicial Circuit, which appoints the district attorney to act as calendar clerk for criminal matters, including setting the time for arraignments, merely aids the judges in the circuit in organizing their courts and is not an unconstitutional delegation of judicial powers; the functions of the district attorney are not exclusively executive, as shown by the requirements in: Ga. Const. 1983, Art. VI, Sec. VIII, Para. I(d) that the district attorney must perform such other services as shall be required by law; O.C.G.A. § 15-18-6(3) that the district attorney shall aid the presiding judge in organizing the courts as the presiding judge may require; and Ga. Unif. Super. Ct. R. 30.1, providing that the judge or the judge's designee shall set the time of an arraignment. Adams v. State, 282 Ga. App. 819, 640 S.E.2d 329 (2006).

Appearance before courts of different judicial circuit. — Solicitor general (now district attorney) in a judicial circuit of this state is not disqualified by the provisions of Ga. Const. 1976, Art. VI, Sec. XI, Para. II (see now Ga. Const. 1983, Art. VI, Sec. VIII, Para. I), former Code 1933, §§ 24-2908, 24-2913, and 24-2914 (see now O.C.G.A. §§ 15-18-5 and 15-18-6) or by any other law to appear before the courts of a different judicial circuit at the request of the prosecution on a trial for murder, and assist the solicitor general (now district attorney) of the latter circuit in the prosecution, notwithstanding the last mentioned officer is not indisposed, or disqualified from interest or relationship, or absent from the circuit, and such assistance is not requisitioned by the presiding judge. Floyd v. State, 182 Ga. 549, 186 S.E. 556 (1936).

Department of Law prosecutes condemnation cases. — In condemnation cases which are brought by the State Highway Department (now Department of Transportation) it is "otherwise specially provided for" that the Department of Law and not the solicitor general (now district attorney) shall prosecute such actions. State Hwy. Dep't v. Smith, 120 Ga. App. 529, 171 S.E.2d 575 (1969).

Grand jury must rely on district attorney for legal services. — Grand jury and the grand jury's committees are without authority to employ attorneys to furnish the grand jury legal services at the county's expense, but must rely upon the district attorney for such services. Daniel v. Yow, 226 Ga. 544, 176 S.E.2d 67 (1970).

Role of district attorney in assisting grand jury. — Prosecuting attorney appears before the grand jury in the prosecutor's official capacity and assists the grand jury in an investigation, examining witnesses, and advising the grand jury on questions of law; but the prosecutor is not as a general rule permitted to be present during the deliberations and voting of the jury. Mach v. State, 109 Ga. App. 154, 135 S.E.2d 467 (1964).

Assistants to prosecuting officer. — Assistant or deputy prosecuting officers and special assistants to the regular prosecuting officer, duly authorized to assist the latter in the discharge of the prosecutor's duties, are invested with the same rights and subject to the same restrictions, with respect to appearing before the grand jury and participating in the proceedings before that body as the regular prosecuting officer. Mach v. State, 109 Ga. App. 154, 135 S.E.2d 467 (1964).

Representation of municipal corporations in quasi-criminal cases. — Municipal corporations when parties in quasi-criminal cases need not be represented by a solicitor general (now district attorney). McDonald v. Town of Ludowici, 3 Ga. App. 654, 60 S.E. 337 (1908).

Service on district attorney insufficient to confer jurisdiction on Court of Appeals. — Court of Appeals is with-

out jurisdiction to entertain a writ of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50) from a criminal case because the solicitor general (now district attorney) of the circuit represents the state, and service upon the solicitor is insufficient as a matter of law to confer jurisdiction of a writ of error on the Court of Appeals. Robinson v. State, 91 Ga. App. 376, 85 S.E.2d 632 (1955).

Divorce actions. — Duty imposed by this section does not include action for divorce since cases of this class are otherwise specially provided for. Boykin v. Martocello, 194 Ga. 867, 22 S.E.2d 790 (1942).

Duty to collect moneys arising from fines and forfeitures. — While it was the duty of the solicitor (now district attorney) to collect all moneys arising from fines and forfeitures, yet if the solicitor states in the solicitor's petition that the solicitor has a surplus which the solicitor desires to pay over to the county treasurer, the solicitor cannot complain because the clerk and the sheriff paid over to the county treasurer stated amounts which should have been turned over to the solicitor (now district attorney) and by the solicitor paid to the county treasurer. This is true for the reason that equity will not require a person to do a useless act. Terrell v. Jolly, 203 Ga. 821, 48 S.E.2d 517 (1948) (decided prior to 1984 amendment).

Presumption that district attorney returned tax to proper office. — Solicitor general (now district attorney) is presumed to have done the solicitor's duty in returning a tax fi. fa. issued by the comptroller general (now state revenue commissioner) to the proper office. John Doe v. Roe, 27 Ga. 68 (1859).

Oath of bailiff need not be administered in open court and entered on the record. Zeigler v. State, 2 Ga. App. 632, 58 S.E. 1066 (1907).

Office of county attorney has no authority to represent state in criminal proceedings. Westbrook v. Zant, 575 F. Supp. 186 (M.D. Ga. 1983), rev'd on other grounds, 743 F.2d 764 (11th Cir 1984).

Cited in Bartlett v. Brunson, 115 Ga. 459, 41 S.E. 601 (1902); Wilson v. Harris, 40 Ga. App. 715, 151 S.E. 402 (1930); Malcom v. Webb, 211 Ga. 449, 86 S.E.2d 489 (1955); In re Pending Cases, 234 Ga. 264, 215 S.E.2d 473 (1975); Wall v. Coleman, 393 F. Supp. 826 (S.D. Ga. 1975); Dampier v. State, 245 Ga. 427, 265 S.E.2d 565 (1980); Mullinax v. McElhenney, 817 F.2d 711 (11th Cir. 1987); Cisco v. State, 285 Ga. 656, 680 S.E.2d 831 (2009).

OPINIONS OF THE ATTORNEY GENERAL

District attorney not peace officer. — District attorney does not fall within the definition of "peace officer" of Ga. L. 1968, p. 1249, § 1 (see now O.C.G.A. § 16-1-3). 1969 Op. Att'y Gen. No. 69-339.

No special powers of arrest and no control over law enforcement agencies. — District attorney does not by virtue of the district attorney's office have any arrest powers greater than that of an ordinary citizen and does not exercise any direct powers or control over law enforcement agencies within the district attorney's circuit. 1980 Op. Att'y Gen. No. U80-33.

Auditing of county funds in district attorney's possession. — As the district attorney may come into possession of county funds, the district attorney's accounts are auditable. 1970 Op. Att'y Gen. No. U70-154.

Unclaimed money escheating to the state. — If money paid into the registry of a court under a condemnation order remains unclaimed for many years, it may escheat to the state upon compliance by court officers with proper procedure. 1970 Op. Att'y Gen. No. U70-167.

Judge must sign sentence. — Trial judge is ultimately responsible for reducing a sentence to writing, even though this duty may be delegated to another officer; in any event, the judge must sign the sentence. 1970 Op. Att'y Gen. No. U70-85.

Responsibility of collecting and distributing fines levied by courts. — District attorney and the state court solicitor are ultimately charged with the responsibility of collecting and distributing the fines levied by their respective courts. 1974 Op. Att'y Gen. No. U74-6.

By virtue of the 1984 legislation, the General Assembly intended to remove from the district attorney any responsibil-

ity for either the collection of fines, forfeitures, and costs levied in criminal cases, or the disbursement of such monies into the county treasury. This responsibility now lies with the clerk of court. 1985 Op. Att'y Gen. No. U85-20.

Duties of those collecting fines and forfeitures. — For a discussion of the respective duties of the prosecuting attorney, sheriff, and clerk of court in the collection of fines and forfeitures in criminal cases, see 1983 Op. Att'y Gen. No. U83-62.

District attorney may participate in fair business practice suits. — Construing former Code 1933, § 40-1602 (see now O.C.G.A. § 45-15-3) and paragraph (5) of former Code 1933, § 24-2908 (see now O.C.G.A. § 15-8-6) together, it was concluded that while the Attorney General must actually initiate every lawsuit brought by a state agency absent overriding legislation, district attorneys may, at the request of the administrator of office of consumer affairs, participate in Fair Business Practices Act (see now O.C.G.A. § 10-1-390 et seq.) suits brought by the administrator, so long as the statutorily imposed duties on the Attorney General were observed. 1977 Op. Att'y Gen. No. 77-67.

State "interested" in actions brought by administrator of office of consumer affairs. — Since actions brought by the administrator of the office of consumer affairs under the Fair Business Practices Act (see now O.C.G.A. § 10-1-390 et seq.) were in the name of the state, it was clear that an action under Ga. L. 1975, p. 376, §§ 7 and 8 (see now O.C.G.A. § 10-1-397) was one in which the state was "interested," as that term was used in former Code 1933, § 24-2908 (see now O.C.G.A. § 15-18-6). 1977 Op. Att'y Gen. No. 77-67.

Probate and municipal courts. — District attorney may not act on criminal matters in probate or municipal court. 1988 Op. Att'y Gen. No. U88-23.

Probate court judge lacks authority to require that district attorney act as prosecutor for the state in traffic violation proceedings in probate court. 1986 Op. Att'y Gen. No. U86-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 17 et seq.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 26 et seq.

ALR. — Sufficiency of indictment as affected by bill of particulars, 10 ALR 982.

Constitutionality of statute relieving against forfeiture of bail or recognizance, 43 ALR 1233.

Necessity that condition, as regards jurisdictional amount, of right of removal of case from state to federal court, shall have existed at time of commencement of action, 107 ALR 1115.

Time for filing petition for removal of action from state to federal court as affected by extension of time for pleading, 108 ALR 966.

Separable controversy for purpose of removal from state to federal court as arising out of action in which nonresident master or principal is joined as defendant with a resident servant or agent, 110 ALR 188.

Duty and discretion of district or prosecuting attorney as regards prosecution for criminal offenses, 155 ALR 10.

Power of assistant or deputy prosecuting or district attorney to file information, or to sign or prosecute it in his own name, 80 ALR2d 1067.

Enforceability of agreement by law enforcement officials not to prosecute if accused would help in criminal investigation or would become witness against others, 32 ALR4th 990.

Limitations on state prosecuting attorney's discretion to initiate prosecution by indictment or by information, 44 ALR4th 401.

15-18-6.1. Representation of state in juvenile court cases.

(a) The district attorney shall be responsible for representing the state in any appeal from the juvenile court. Except as provided in subsection (c) of this Code section, the district attorney shall be responsible for representing the state in the prosecution of delinquency cases in the juvenile court and may represent the state as parens patraie in cases involving a child in need of services. The district attorney may designate assistant district attorneys, investigators, victim and witness assistance personnel, and other employees to assist in juvenile court.

(b) In counties with a solicitor-general for the state court, the solicitor-general may, with the approval of the district attorney, represent the state in prosecution of juvenile traffic offenses and in any delinquency case arising out of the operation of a motor vehicle or a watercraft.

(c) If as a result of workload, lack of staff, or other cause the district attorney determines that his or her office cannot provide representation for the state in a juvenile court of a county, other than for an appeal, the district attorney shall notify in writing the chief judge of superior court, the judge or judges of the juvenile court, and the chairperson of the county governing authority of such county of such determination. A copy of such notice shall be provided to the Prosecuting Attorneys' Council of the State of Georgia. If the district attorney determines that his or her office may resume representation in juvenile court, he or she shall notify the chief judge of the superior court, the judge or judges of the juvenile court, and the chairperson of the county governing authority in writing.

(d) Upon receipt of the notice set forth in subsection (c) of this Code section, the governing authority of such county may appoint one or more attorneys to represent the state in prosecuting delinquency and child in need of services cases in juvenile court. Such attorney shall be compensated in an amount to be fixed by the governing authority of such county. The governing authority shall determine and state in writing whether an attorney shall serve on a full-time or part-time basis. An attorney appointed to serve on a full-time basis shall not engage in the private practice of law. An attorney appointed to serve on a part-time basis may engage in the private practice of law, but shall not represent a child charged with committing a delinquent act or being a child in need of services in the juvenile court of the county in which he or she serves as part-time prosecutor nor may he or she appear in any matter in which he or she has exercised jurisdiction.

(e) An attorney appointed pursuant to subsection (d) of this Code section shall have all of the powers, duties, and authority of the district

attorney with regard to delinquency and child in need of services cases and shall be subject to all laws and rules governing the conduct of prosecuting attorneys in this state. If such attorney is disqualified from interest or relationship to engage in prosecution, the provisions of Code Section 15-18-5 shall apply. (Code 1981, § 15-18-6.1, enacted by Ga. L. 2013, p. 294, § 4-4/HB 242; Ga. L. 2015, p. 540, § 2-8/HB 361.)

Effective date. — This Code section became effective January 1, 2014.

The 2015 amendment, effective May 5, 2015, added "and may represent the state as parens patraie in cases involving a child in need of services" at the end of the second sentence of subsection (a); in subsection (d), inserted "and child in need of services" near the end of the first sentence, and inserted "or being a child in need of services" in the middle of the last sentence; and inserted "and child in need of services" in the middle of the first sentence of subsection (e).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

15-18-7. Representation of state in criminal cases removed to federal court.

Whenever any criminal prosecution commenced by this state against any person for a violation of the laws of this state is removed to a United States district court pursuant to Chapter 89 of Title 28 of the United States Code, it shall be the duty of the district attorney of the circuit from which the case was removed, in association with the Attorney General, to appear for the state as the prosecuting officers of the state. The expenses incurred by the district attorney as actual costs in the prosecution of any such case shall be paid by the state out of such funds as may be provided for the operation of the superior courts or as otherwise may be provided by law. (Ga. L. 1882-83, p. 98, §§ 1, 2; Code 1933, § 24-2909; Ga. L. 1977, p. 1257, § 5.)

U.S. Code. — Chapter 89, T. 28 of the United States Code, referred to in this Code section, is codified at 28 U.S.C. § 1441 et seq.

JUDICIAL DECISIONS

Cited in McClendon v. May, 37 F. Supp. 2d 1371 (S.D. Ga. 1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 23 et seq.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 32 et seq.

ALR. — Necessity that condition, as regards jurisdictional amount, of right of removal of case from state to federal court, shall have existed at time of commencement of action, 107 ALR 1115.

Time for filing petition for removal of action from state to federal courts as affected by extension of time for pleading, 108 ALR 966.

Separable controversy for purpose of removal from state to federal court as arising out of action in which nonresident master or principal is joined as defendant with a resident servant or agent, 110 ALR 188.

Anticipatory relief in federal courts against state criminal prosecutions growing out of civil rights activities, 8 ALR3d 301.

15-18-8. Appointment of district attorney as counsel for state officers investigated, charged, accused, or indicted for federal violation in performance of duty.

Reserved. Repealed by Ga. L. 1997, p. 1319, § 2, effective July 1, 1997.

Editor's notes. — This Code section was based on Ga. L. 1956, p. 719, § 1; Code 1933, § 24-2921, enacted by Ga. L. 1977, p. 1257, § 10.

15-18-9. Authority to enter nolle prosequi.

The district attorney has authority, on the terms prescribed by law, to enter a nolle prosequi on indictments. (Orig. Code 1863, § 354; Code 1868, § 415; Code 1873, § 380; Code 1882, § 380; Penal Code 1895, § 801; Penal Code 1910, § 801; Code 1933, § 24-2915.)

RESEARCH REFERENCES

ALR. — Power and duty of court as to continuation of action or prosecution upon refusal of city, county, or district attorney to proceed therewith, 103 ALR 1253.

Limitations on state prosecuting attorney's discretion to initiate prosecution by indictment or by information, 44 ALR4th 401.

15-18-10. (For effective date, see note.) Compensation of district attorneys; private practice of law prohibited.

(a) (For effective date, see note.) Each district attorney shall receive an annual salary from state funds as prescribed by law. Such salary shall be paid as provided in Code Sections 15-18-10.1 and 15-18-19.

(b) The county or counties comprising the judicial circuit may supplement the salary of the district attorney in such amount as is or may be authorized by local Act or in such amount as may be determined by

the governing authority of such county or counties, whichever is greater.

(c) (For effective date, see note.) The clerk of court shall collect any such fees, fines, forfeitures, costs, and emoluments and remit the same to the county treasury by the fifteenth day of each month.

(d) No district attorney receiving an annual salary under this Code section shall engage in the private practice of law. (Code 1933, § 24-2905, enacted by Ga. L. 1977, p. 1257, § 2; Ga. L. 1997, p. 1319, § 3; Ga. L. 2015, p. 919, § 1-5/HB 279.)

Delayed effective date. — Subsections (a) and (c), as set out above, become effective January 1, 2016. For versions of subsections (a) and (c) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, substituted "Code Sections 15-18-10.1 and 15-18-19" for "Code Section 15-18-19" at the end of subsection (a); and deleted the former first sentence of subsection (c), which read: "All fees, fines, forfeitures, costs, and commissions formerly allowed district attorneys for their services as district attorney or as solicitor of any other court shall become the property of the county in which the services of the district attorney were rendered." See editor's note for effective date.

Cross references. — Compensation and allowances of district attorneys, Ga. Const. 1983, Art. VI, Sec. VIII, Para. I. Annual salary of district attorneys, § 45-7-4(a)(21).

Editor's notes. — Ga. L. 2015, p. 919, § 4-1(b)(1) and (2)/HB 279, not codified by the General Assembly, provides: "(b)(1) Part I of this Act shall become effective only if funds are appropriated for purposes of Part I of this Act in an appropriations Act enacted at the 2015 regular session of the General Assembly.

"(2) If funds are so appropriated, then Part I of this Act shall become effective on July 1, 2015, for purposes of making the initial appointments of the Court of Appeals Judges created by Part I of this Act, and for all other purposes, Part I of this Act shall become effective on January 1, 2016." Funds were appropriated at the 2015 session of the General Assembly.

JUDICIAL DECISIONS

Appointed attorney not precluded from private practice. — Attorney appointed by a presiding judge as a part-time district attorney pro tempore assigned pursuant to O.C.G.A. § 15-18-27(a) to prosecute criminal acts allegedly committed by a district attorney and/or the district attorney's staff is not precluded from the private practice of criminal law for the duration of the appointment. State v. Redd, 243 Ga. App. 809, 534 S.E.2d 473 (2000).

OPINIONS OF THE ATTORNEY GENERAL

If a district attorney pro tempore has been appointed, the district attorney is still paid by the state if the district attorney has not resigned or abandoned the district attorney's office. 1977 Op. Att'y Gen. No. U77-50.

Special master in condemnation case. — District attorney should not serve as special master in condemnation case. 1970 Op. Att'y Gen. No. U70-39.

Duties of those collecting fines and forfeitures. — For a discussion of the respective duties of the prosecuting attorney, sheriff, and clerk of court in the collection of fines and forfeitures in criminal cases, see 1983 Op. Att'y Gen. No. U83-62.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, §§ 15, 16.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, §§ 64, 70.

15-18-10.1. (Effective January 1, 2016) Annual accountability supplement; exception.

(a) Whenever a circuit has implemented a drug court division, mental health court division, or veterans court division, then on and after January 1, 2016, the state shall pay the district attorney in such circuit an annual accountability court supplement of $6,000.00. Such supplement shall be paid from state funds by the Prosecuting Attorneys' Council of the State of Georgia in equal monthly installments as regular compensation.

(b) Notwithstanding Code Sections 15-18-14 and 15-18-14.2, the accountability court salary supplement paid pursuant to this Code section shall not be included in any calculation of compensation paid to assistant district attorneys or victim assistance coordinators that is measured as a percentage of a district attorney's salary.

(c) When a local law provides for a salary to be paid based on a percentage of, total compensation for, or similar mathematical relationship to a district attorney's salary, the accountability court salary supplement paid pursuant to this Code section shall not be included in the calculation of compensation to be paid by a county, municipality, or consolidated government.

(d) Notwithstanding subsection (b) of Code Section 15-18-10 and Code Section 15-18-19, on or after January 1, 2016, no county or counties comprising the circuit shall increase an aggregate county salary supplement paid to the district attorney or a state-paid position appointed pursuant to this article, if such supplement is $50,000.00 or more. (Code 1981, § 15-18-10.1, enacted by Ga. L. 2015, p. 919, § 1-6/HB 279.)

Delayed effective date. — This Code section becomes effective January 1, 2016.

Editor's notes. — Ga. L. 2015, p. 919, § 4-1(b)(1) and (2)/HB 279, not codified by the General Assembly, provides: "(b)(1) Part I of this Act shall become effective only if funds are appropriated for purposes of Part I of this Act in an appropriations Act enacted at the 2015 regular session of the General Assembly.

"(2) If funds are so appropriated, then Part I of this Act shall become effective on July 1, 2015, for purposes of making the initial appointments of the Court of Appeals Judges created by Part I of this Act, and for all other purposes, Part I of this Act shall become effective on January 1, 2016." Funds were appropriated at the 2015 session of the General Assembly.

15-18-11. Supplementation of compensation for services under Code Section 19-11-23.

In addition to any other compensation or county supplement provided by law, any county, by appropriate action of the county governing authority, is authorized to supplement from county funds the salary of the district attorney for the judicial circuit in which the county lies for services performed by the district attorney pursuant to Code Section 19-11-23. (Code 1933, § 24-2905.2, enacted by Ga. L. 1980, p. 830, § 1.)

Cross references. — Annual salary of district attorneys, § 45-7-4.

OPINIONS OF THE ATTORNEY GENERAL

Assistant district attorneys. — Section does not apply to assistant district attorneys. 1980 Op. Att'y Gen. No. U80-36.

15-18-12. Travel expenses; provision of county vehicle; budget request for state funds.

(a) The district attorney and any personnel compensated by the state pursuant to the provisions of this chapter shall be entitled to receive, in addition to such other compensation as may be provided by law, reimbursement for actual expenses incurred in the performance of their official duties from the Prosecuting Attorneys' Council of the State of Georgia in accordance with the rules and regulations issued pursuant to Code Section 45-7-28.1 and such supplemental rules as may be adopted by the council.

(b) Nothing in this Code section shall permit reimbursement of expenses or payment of a per diem allowance to any person designated by subsection (a) of this Code section for travel between such person's residence and the courthouse or other office designated in writing by the district attorney as such person's place of employment or any office of the district attorney located in the county in which such person resides.

(c) The Prosecuting Attorneys' Council of the State of Georgia shall be authorized to provide advance travel funds to persons designated by subsection (a) of this Code section as provided by Code Sections 45-7-25 through 45-7-28.

(d)(1) The governing authority of the county or counties comprising the judicial circuit may provide a person designated by subsection (a) of this Code section with a government owned vehicle and vehicle expenses, in which event the Prosecuting Attorneys' Council of the State of Georgia may reimburse the county for the actual mileage driven at the same rate as is authorized by rules and regulations

issued pursuant to Code Section 45-7-28.1, subject to the budget established for the judicial circuit.

(2) Subject to the budget established for the judicial circuit, the Prosecuting Attorneys' Council of the State of Georgia may pay the actual costs incurred by the district attorney's office for the operation of state owned motor vehicles. The Prosecuting Attorneys' Council of the State of Georgia shall adopt rules governing the operation of such vehicles.

(e)(1) Subject to the provisions of paragraphs (3) and (4) of this subsection, expenses paid by the Prosecuting Attorneys' Council of the State of Georgia pursuant to this Code section shall be paid out of such funds as may be appropriated by the General Assembly.

(2) On or before June 1 of each year, the council shall establish and furnish to each district attorney and the state auditor the travel budget for each judicial circuit based on the amount appropriated by the General Assembly for such purpose.

(3) In determining the travel budget for each judicial circuit, the council shall consider the budget request submitted by the district attorney of each judicial circuit, the geographic size and the caseload of each circuit, and such other facts as may be relevant. The council is authorized to establish a contingency reserve of not more than 3 percent of the total amount appropriated by the General Assembly in order to meet any expenses which could not be reasonably anticipated. The council shall submit to each district attorney, the state auditor, the House Budget and Research Office, and the Senate Budget and Evaluation Office a monthly report showing the budget amount of expenditures made under the travel budget. The council may periodically review and adjust said budget as may be necessary to carry out the purposes of this Code section.

(4) No person designated by subsection (a) of this Code section shall be reimbursed from state funds for any expenses for which such person has been reimbursed from funds other than state funds; provided, however, that the governing authority of the county or counties comprising the judicial circuit are authorized to provide travel advances or to reimburse such expenses which may be incurred by such person in the performance of his or her official duties to the extent such expenses are not reimbursed by the state as provided in this Code section.

(f) The Prosecuting Attorneys' Council of the State of Georgia shall prepare and submit a proposed budget for state funds necessary to provide reimbursement of expenses as provided in this Code section in accordance with the provisions of Code Section 45-12-78. The budget request shall be based on the previous year's expenditures and budget

requests submitted by each district attorney. (Ga. L. 1971, p. 305, § 1; Code 1933, § 24-2905.1, enacted by Ga. L. 1977, p. 1257, § 3; Ga. L. 1981, p. 682, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 1996, p. 382, § 1; Ga. L. 1997, p. 1319, § 4; Ga. L. 1998, p. 128, § 15; Ga. L. 2008, p. VO1, § 1-5/HB 529; Ga. L. 2014, p. 866, § 15/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "House Budget and Research Office" for "House Budget Office" and "Senate Budget and Evaluation Office" for "Senate Budget Office" in the third sentence of paragraph (e)(3).

Cross references. — Annual salary of district attorney, § 45-7-4(a)(21). Legal mileage allowance, § 50-19-7.

OPINIONS OF THE ATTORNEY GENERAL

Meals and lodging. — District attorney and assistant district attorneys are entitled to reimbursement up to amount set for daily expense allowance authorized for members of the General Assembly for actual cost of meals and lodging incurred outside county in which principal office is located. 1982 Op. Att'y Gen. No. U82-41.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 15.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 69.

15-18-13. Payment of costs in appellate courts.

The bill of costs and any filing fees in appeals or applications filed in the Supreme Court or the Court of Appeals on behalf of the state by a district attorney shall be paid by the Prosecuting Attorneys' Council of the State of Georgia out of such funds as may be appropriated for the operations of the district attorneys. (Orig. Code 1863, § 1581; Code 1868, § 1643; Code 1873, § 1649; Code 1882, § 1649; Ga. L. 1884-85, p. 470, § 40; Penal Code 1895, §§ 1101, 1103; Penal Code 1910, §§ 1128, 1130; Code 1933, § 24-2906; Ga. L. 1977, p. 1257, § 4; Ga. L. 1997, p. 1319, § 5.)

Cross references. — Amount of bill of costs for cases carried to Supreme Court or Court of Appeals, § 5-6-4.

JUDICIAL DECISIONS

Fee not collectible by private person voluntarily appearing. — Fee to be paid by the state for services rendered in the Supreme Court appertains to the office and may not be collected by a private person voluntarily appearing before the Supreme Court. Rozier v. State, 177 Ga. 420, 170 S.E. 241 (1933).

Cited in Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 15.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 32 et seq.

15-18-14. Appointment of assistant district attorneys; qualifications; compensation.

(a)(1) Subject to the provisions of this Code section, the district attorney in each judicial circuit is authorized to appoint:

(A) One attorney for each superior court judge authorized for the circuit, excluding senior judges, plus one additional attorney to assist the district attorney in the performance of the duties of the district attorney's office and consistent with their constitutional and statutory duties to protect the rights of victims of crimes as now or in the future may be defined by applicable law;

(B) Subject to the availability of funding and at the option of the Department of Human Services, at least one assistant district attorney to perform duties described specifically under Code Sections 19-11-23 and 19-11-53 and generally under Article 1 of Chapter 11 of Title 19, the "Child Support Recovery Act," Article 2 of Chapter 11 of Title 19, the "Uniform Reciprocal Enforcement of Support Act," and Article 3 of Chapter 11 of Title 19, the "Uniform Interstate Family Support Act." The district attorney retains the authority to appoint one or more assistant district attorneys, who shall be county employees, to perform the aforementioned statutory duties, so long as such appointments are pursuant to a contract for such services with the Department of Human Services. Once the election to make this position a state position is made, under this statutory provision, it shall be irrevocable. Contractual funds shall be paid by the Department of Human Services to the Prosecuting Attorneys' Council of the State of Georgia in accordance with the compensation provisions of this Code section, or at the election of the appointed attorney, to the appointed attorney's judicial circuit, in accordance with the compensation provisions of that judicial circuit; and

(C) Subject to funds being appropriated by the General Assembly or otherwise available for such purpose, such additional assistant district attorneys as may be authorized by the Prosecuting Attorneys' Council of the State of Georgia. In authorizing additional assistant district attorneys, the Prosecuting Attorneys' Council of the State of Georgia shall consider the case load, present staff, and resources available to each district attorney, and shall make such authorizations as will contribute to the efficiency of individual district attorneys and the effectiveness of prosecuting

attorneys throughout the state in their efforts against criminal activity in the state.

(2) Subject to the provisions of this Code section and subject to such funds as may be appropriated by the General Assembly or which are otherwise available to the State of Georgia for such purpose, the district attorney in each judicial circuit shall appoint one additional assistant district attorney who shall prosecute, as directed by the district attorney, primarily cases involving violations of Article 2 of Chapter 13 of Title 16, known as the "Georgia Controlled Substances Act." This assistant district attorney shall be designated as a "special drug prosecutor." Such assistant district attorney shall be subject to the classification, compensation, benefits, policies, and personnel related provisions of subsections (b) through (f) of this Code section and Code Section 15-18-19. In the event that the funds appropriated or otherwise available in any fiscal year for purposes of this paragraph are sufficient to implement this paragraph in some but not all judicial circuits, the Prosecuting Attorneys' Council of the State of Georgia shall designate the judicial circuits in which this paragraph shall be implemented for such fiscal year.

(b) Each attorney appointed pursuant to subsection (a) of this Code section shall be classified based on education, training, and experience. The classes of attorneys and the minimum qualifications required for appointment or promotion to each class shall be established by the Prosecuting Attorneys' Council of the State of Georgia based on education, training, and experience, and in accordance with the provisions of Code Section 15-18-21 and subsection (c) of Code Section 15-18-19.

(c) Each attorney appointed pursuant to this Code section shall be compensated based on a salary schedule established in accordance with subsection (e) of Code Section 15-18-19. The salary range for each class established in accordance with subsection (b) of this Code section shall be as follows:

(1) Assistant district attorney I. Not less than $38,124.00 nor more than 65 percent of the compensation of the district attorney;

(2) Assistant district attorney II. Not less than $40,884.00 nor more than 70 percent of the compensation of the district attorney;

(3) Assistant district attorney III. Not less than $45,108.00 nor more than 80 percent of the compensation of the district attorney; and

(4) Assistant district attorney IV. Not less than $52,176.00.

(d) All personnel actions involving attorneys appointed pursuant to this Code section shall be made by the district attorney in writing in accordance with the provisions of Code Section 15-18-19.

(e)(1) All salary advancements shall be based on quality of work, education, and performance.

(2) The salary of an attorney appointed pursuant to this Code section may be advanced one step at the first of the calendar month following the anniversary of such attorney's appointment.

(3) Any attorney who, subsequent to his or her appointment pursuant to this Code section, is awarded an LL.M. or S.J.D. degree by a law school recognized by the State Bar of Georgia from which a graduate of or student enrolled therein is permitted to take the bar examination or by a law school accredited by the American Bar Association or the Association of American Law Schools may be advanced two salary steps effective on the first day of the calendar month following the award of the degree, provided that such advancement does not exceed the maximum of the salary range applicable to the attorney's class.

(f) Any attorney appointed pursuant to this Code section may be promoted to the next highest class at any time the attorney meets the minimum qualifications for such class, but in order to be eligible for promotion, the attorney shall have served not less than 12 months in the class from which the attorney is to be promoted. When an attorney is promoted to the next highest class, the attorney shall enter the higher class at the salary step which provides an annual salary nearest to, but greater than, the annual salary the attorney was receiving immediately prior to the promotion. (Code 1933, § 24-2919, enacted by Ga. L. 1977, p. 1257, § 8; Ga. L. 1979, p. 639, § 1; Ga. L. 1981, p. 711, §§ 1, 2; Ga. L. 1983, p. 3, § 12; Ga. L. 1983, p. 622, § 1; Ga. L. 1984, p. 22, § 15; Ga. L. 1984, p. 1182, § 1; Ga. L. 1986, p. 203, §§ 1, 2, 3; Ga. L. 1990, p. 8, § 15; Ga. L. 1990, p. 1235, § 1; Ga. L. 1991, p. 744, §§ 1, 2; Ga. L. 1992, p. 6, § 15; Ga. L. 1992, p. 1327, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 15; Ga. L. 1995, p. 394, § 2; Ga. L. 1996, p. 748, § 3; Ga. L. 1997, p. 1319, § 6; Ga. L. 1997, p. 1613, § 4; Ga. L. 1998, p. 270, § 3; Ga. L. 1999, p. 81, § 15; Ga. L. 1999, p. 365, § 2; Ga. L. 2000, p. 1521, § 1; Ga. L. 2006, p. 414, § 1/HB 268; Ga. L. 2008, p. 577, § 7/SB 396; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Code Commission notes. — Ga. L. 1999, p. 81, § 15, also amended this Code section. However, that amendment has been treated as superseded by Ga. L. 1999, p. 365, § 2.

Editor's notes. — Ga. L. 1999, p. 365, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Special Drug Prosecutor Act.'"

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 121 (1997). For review of 1998 legislation relating to crimes and offenses, see 15 Ga. St. U.L. Rev. 80 (1998).

For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 56 (1999).

JUDICIAL DECISIONS

Cited in Hudson v. State, 248 Ga. 397, 283 S.E.2d 271 (1981); McClendon v. May, 37 F. Supp. 2d 1371 (S.D. Ga. 1999).

OPINIONS OF THE ATTORNEY GENERAL

Discretion as to salary. — General Assembly intended the district attorney to have complete discretion in setting salary and the size of any salary increase so long as the district attorney does not exceed the maximum set forth in the statutes. 1979 Op. Att'y Gen. No. 79-48.

Salary paid from state funds for assistant district attorneys is within the discretion of the district attorney so long as the district attorney does not exceed the maximum set by law. 1979 Op. Att'y Gen. No. 79-48.

Maximum state salary authorized for an assistant district attorney who has previous service either with the Department of Law or the Prosecuting Attorneys' Council should be computed as though the entire period of employment were as an assistant district attorney. 1983 Op. Att'y Gen. No. U83-54.

Cost-of-living increases authorized in former paragraph (b)(5) of O.C.G.A. § 15-18-14 would be included in the credit given in former paragraph (b)(7) of O.C.G.A. § 15-18-14 to those who have served as assistant attorneys general or as attorneys for the Prosecuting Attorneys' Council. 1983 Op. Att'y Gen. No. U83-54.

Maternity leave. — District attorney may place a state paid assistant district attorney on a voluntary leave without pay status for maternity purposes and that during that period of time the state paid assistant district attorney would be entitled to the same benefits and coverage under the State Health Benefit Plan as any other state employee on a voluntary leave of absence without pay for maternity purposes. 1983 Op. Att'y Gen. No. U83-44.

County may supplement salary. — County commission may supplement the salary of an assistant district attorney without specific local legislation authorizing the supplementation. 1978 Op. Att'y Gen. No. U78-36.

Determining eligibility for compensation as assistant district attorney. — Since a district attorney is now included in the definition of the term "prosecuting attorney" for purposes of determining the appropriate salary for an assistant district attorney, time served as a district attorney is to be considered as time served as a prosecuting attorney for purposes of calculating eligibility for compensation as an assistant district attorney under O.C.G.A. § 15-18-14(c). 1990 Op. Att'y Gen. No. U90-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, §§ 10, 16.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 81 et seq.

15-18-14.1. Investigators; qualifications; powers; compensation.

(a) Subject to the provisions of this Code section, the district attorney in each judicial circuit is authorized to appoint one investigator to assist the district attorney in the performance of his or her official duties in the preparation of cases for indictment or trial. Subject to funds being appropriated by the General Assembly or otherwise available for such purpose, the district attorney in each judicial circuit may appoint such

additional district attorney investigators as may be authorized by the Prosecuting Attorneys' Council of the State of Georgia. In authorizing additional district attorney investigators, the Prosecuting Attorneys' Council of the State of Georgia shall consider the case load, present staff, and resources available to each district attorney, and shall make such authorizations as will contribute to the efficiency of individual district attorneys and the effectiveness of prosecuting attorneys throughout the state in their efforts against criminal activity in the state.

(b) An investigator appointed pursuant to this Code section shall be not less than 21 years of age, meet the qualifications specified by subsection (c) of Code Section 15-18-21, and shall serve at the pleasure of the district attorney.

(c) No person appointed pursuant to this Code section shall exercise any of the powers or authority which are by law vested in the office of sheriff or any other peace officer, including the power of arrest, except as may be authorized by law. An investigator appointed pursuant to this Code section shall:

(1) Serve as a liaison between the district attorney's office and the sheriffs' and other law enforcement agencies within the judicial circuit;

(2) Assist victims and witnesses of crimes through the complexities of the criminal justice system and ensure that victims of crime are apprised of the rights afforded them under Chapter 14 of Title 17; Chapter 17 of Title 17, the "Crime Victims' Bill of Rights"; Chapter 18 of Title 17; and Code Section 24-6-616;

(3) Assist the attorneys within the district attorney's office in the preparation of cases for preliminary hearings, presentation to a grand jury, pretrial hearings, and trial;

(4) Assist the sheriffs and other peace officers within the judicial circuit in the application for warrants and the preparation of case reports which are required by law or which are necessary for the prosecution of the case;

(5) Provide such other assistance to the sheriffs and other peace officers as may be authorized by law or which may be mutually agreed on between the district attorney and the sheriff or head of the law enforcement agency or agencies involved; and

(6) Perform such other duties as are required by the district attorney.

(d) Each investigator appointed pursuant to this Code section shall be compensated based on a salary schedule established pursuant to

Code Section 15-18-19. The salary range for the investigator appointed pursuant to this Code section shall be not less than $30,828.00.

(e)(1) Except as otherwise provided in this subsection, a district attorney investigator shall be appointed initially to the entry grade of the general pay schedule.

(2) Any person who is employed in a nonstate paid investigator's position within a district attorney's office may be transferred to a state paid position. Such transfer shall be to the salary step which is based on the number of years the person has served in the investigator position as if the person had been initially appointed pursuant to this Code section.

(3) Any person who is employed as a peace officer by an agency of the executive branch of state government who is appointed as an investigator pursuant to this Code section without a break in service may be appointed to the salary step which is one step above the annual salary such person received on the last day of employment immediately preceding said appointment.

(4) Any person who was a certified peace officer employed on a full-time basis by this state, the United States or any of the several states, or a political subdivision or authority thereof, may be appointed to the salary step above the entry level based on one step for every three years' experience as a full-time certified peace officer.

(f) Personnel appointed pursuant to this Code section shall be reimbursed for actual expenses incurred in the performance of their official duties in accordance with the provisions of Code Section 15-18-12. (Code 1981, § 15-18-14.1, enacted by Ga. L. 1987, p. 1337, § 1; Ga. L. 1996, p. 382, § 2; Ga. L. 1997, p. 1319, § 7; Ga. L. 1999, p. 81, § 15; Ga. L. 2000, p. 1521, § 2; Ga. L. 2004, p. 466, § 1; Ga. L. 2005, p. 60, § 15/HB 95; Ga. L. 2006, p. 414, § 2/HB 268; Ga. L. 2011, p. 99, § 23/HB 24.)

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides, in part, that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

15-18-14.2. Victim assistance coordinator.

(a) Subject to such funds as may be appropriated by the General Assembly or which are otherwise available to the State of Georgia for such purpose, the district attorney is authorized to employ a victim assistance coordinator and such other victim assistance personnel as may be necessary to assist the district attorney in carrying out the

duties imposed by Chapters 15, 17, and 18 of Title 17 relating to the rights of victims of crime or other laws of this state relating to the rights of victims of crimes. Any such personnel shall be compensated by the state in the same manner as other state paid personnel appointed pursuant to this article from such funds as may be appropriated for such purpose or as are otherwise available for such purpose. Such personnel shall also be authorized to receive the same fringe benefits as other state paid personnel.

(b) Subject to the provisions of Code Section 15-18-19, the district attorney shall fix the compensation of each person appointed pursuant to this Code section; provided, however, that the maximum salary for any such position shall not exceed 70 percent of the annual salary of the district attorney from state funds.

(c) Each person employed as a victim assistance coordinator or victims' advocate shall complete an initial training program prescribed by the Prosecuting Attorneys' Council of the State of Georgia within 12 months of such employment and such in-service training as the council shall by rule prescribe.

(d) Not later than June 1 of each year, the Prosecuting Attorneys' Council of the State of Georgia shall furnish to each district attorney a budget for the judicial circuit based on the amount appropriated by the General Assembly or otherwise available for personnel and operations of victim assistance programs authorized by this Code section. (Code 1981, § 15-18-14.2, enacted by Ga. L. 1997, p. 1319, § 8; Ga. L. 1998, p. 128, § 15; Ga. L. 2004, p. 466, § 2; Ga. L. 2008, p. 577, § 8/SB 396.)

Cross references. — State Victim Services Commission, T. 35, C. 6.

15-18-15. Chief assistant district attorney; powers and duties in district attorney's absence.

(a) The district attorney may designate in writing an assistant district attorney as the chief assistant district attorney. In addition to such assistant district attorney's other duties, the chief assistant district attorney shall have such administrative and supervisory duties as may be assigned by the district attorney.

(b)(1) If the district attorney is unable to perform the duties of the office because of physical or mental disability, the chief assistant district attorney shall have the same power, duties, and responsibilities as the district attorney. Said authority shall terminate upon the incumbent district attorney resuming the duties of said office. Any question of fact concerning the disability of a district attorney shall be presented by either the chief assistant district attorney or the district attorney and shall be determined by the superior court sitting

without a jury in a manner and under a procedure which is analogous to that provided by rule of the Supreme Court adopted pursuant to Article V, Section IV, Paragraph II of the Constitution of Georgia for elected constitutional executive officers.

(2) If the district attorney will be temporarily absent from the judicial circuit such that he or she is not available to perform the duties of his or her office, the district attorney may authorize, in writing, the chief assistant district attorney to exercise any of the powers, duties, and responsibilities of the district attorney during such absence, including but not limited to such powers and duties as the district attorney may have pursuant to this title, Code Section 16-11-64, and Code Section 24-5-507 and the laws of this state relating to the validation of bonds.

(3) If the district attorney shall be absent for a period of more than 30 days as a result of ordered military duty, as defined in Code Section 38-2-279, or disability as provided in paragraph (1) of this subsection, the chief assistant district attorney shall be designated acting district attorney. If no chief assistant has been designated pursuant to subsection (a) of this Code section, the district attorney shall designate a chief assistant district attorney pursuant to subsection (a) of this Code section prior to entering ordered military service. Should the district attorney fail to designate a chief assistant district attorney prior to entering ordered military duty, the assistant district attorney senior in time of service shall be designated the acting district attorney. The designation of an acting district attorney shall terminate upon the district attorney's release from ordered military duty or the district attorney resuming the duties of said office as provided in paragraph (1) of this subsection.

(4) An acting district attorney, upon assuming the office as provided in paragraph (1) or (3) of this subsection, shall be compensated at the same rate as is authorized by general or local law for the district attorney. The acting district attorney shall retain such other benefits and emoluments as an assistant district attorney, including, but not limited to, membership in the Employees' Retirement System of Georgia and coverage under the State Employees Health Benefit Plan.

(5) The acting district attorney shall be authorized to appoint an additional assistant district attorney who shall be compensated in the same manner and from the same source or sources as the acting district attorney was compensated prior to being designated acting district attorney. Said appointment shall be temporary and shall terminate upon the district attorney resuming the duties of his or her office.

(c) In addition to any other compensation which the chief assistant district attorney may receive from state or county funds, the district

attorney may authorize the chief assistant district attorney to be paid an amount based on the salary schedule developed by the Prosecuting Attorneys' Council of the State of Georgia pursuant to Code Section 15-18-19. (Code 1933, § 24-2920, enacted by Ga. L. 1977, p. 1257, § 9; Ga. L. 1984, p. 1182, § 2; Ga. L. 1991, p. 135, § 2; Ga. L. 1996, p. 382, § 3; Ga. L. 1997, p. 1319, § 9; Ga. L. 2011, p. 99, § 24/HB 24.)

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides, in part, that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 10.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 81 et seq.

ALR. — Power of assistant or deputy prosecuting or district attorney to file information, or to sign or prosecute it in his own name, 80 ALR2d 1067.

15-18-16. Substitution of assistant on death or resignation of district attorney.

Upon the death or resignation of a district attorney, the chief assistant district attorney or, if there is no chief assistant district attorney, the assistant district attorney senior in time of service shall perform the duties of the deceased or resigned district attorney in his or her name until such official's successor is appointed or elected and qualified. An assistant district attorney performing the duties of a deceased or resigned district attorney shall be compensated as provided for acting district attorneys in subsection (b) of Code Section 15-18-15. (Code 1933, § 24-2919, enacted by Ga. L. 1977, p. 1257, § 8; Ga. L. 1979, p. 639, § 2; Ga. L. 2006, p. 414, § 3/HB 268.)

JUDICIAL DECISIONS

Cited in Hudson v. State, 248 Ga. 397, 283 S.E.2d 271 (1981).

RESEARCH REFERENCES

ALR. — Power of assistant or deputy prosecuting or district attorney to file information, or to sign or prosecute it in his own name, 80 ALR2d 1067.

15-18-17. Employment of administrative personnel generally.

(a) Each district attorney is authorized to employ such administrative, clerical, and paraprofessional personnel as may be authorized by the Prosecuting Attorneys' Council of the State of Georgia based on

funds appropriated by the General Assembly or otherwise available for such purposes; provided, however, that each district attorney shall be authorized not less than two such personnel. In authorizing administrative, clerical, and paraprofessional personnel, the Prosecuting Attorneys' Council of the State of Georgia shall consider the case load, present staff, and resources available to each district attorney, and shall make such authorizations as will contribute to the efficiency of individual district attorneys and the effectiveness of prosecuting attorneys throughout the state in their efforts against criminal activity in the state.

(b) Personnel appointed pursuant to this Code section shall be compensated based on a salary schedule developed in accordance with Code Section 15-18-19.

(c) All personnel actions involving personnel appointed pursuant to this Code section shall be in accordance with the provisions of Code Section 15-18-19. (Ga. L. 1972, p. 617, § 1; Ga. L. 1975, p. 1506, § 2; Ga. L. 1977, p. 668, § 2; Ga. L. 1981, p. 672, § 1; Ga. L. 1982, p. 1486, §§ 2, 4; Ga. L. 1985, p. 434, § 2; Ga. L. 1990, p. 1226, § 2; Ga. L. 1992, p. 6, § 15; Ga. L. 1993, p. 91, § 15; Ga. L. 1997, p. 143, § 15; Ga. L. 1997, p. 1319, § 10; Ga. L. 2000, p. 1521, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Intent of General Assembly, in authorizing the employment of secretaries, was to ensure that superior court judges and district attorneys were provided with adequate assistance so they could accomplish their official tasks in an efficient manner without being burdened by clerical problems. 1972 Op. Att'y Gen. No. 72-104.

No intent to penalize certain secretaries. — Intent of the General Assembly in providing for the employment and compensation of secretaries for superior court judges and district attorneys and providing that certain of these secretaries must become members of the Employees Retirement System was to provide superior court judges and district attorneys with adequate secretarial assistance so their official duties could be accomplished efficiently without undue clerical problems; it is reasonable that the General Assembly did not intend for this to penalize certain secretaries by forcing their removal from county retirement programs. 1975 Op. Att'y Gen. No. 75-70.

Secretaries are state employees. — Clearly, a secretary is also a state employee. 1979 Op. Att'y Gen. No. U79-12.

Calculation of merit increases. — In calculating a merit increase for a state paid secretary of a district attorney, the increase should be calculated on the secretary's current annual salary. 1983 Op. Att'y Gen. No. 83-29.

Limits on merit pay raises. — District attorney may grant merit pay raises to the attorney's secretaries appointed under the authority of O.C.G.A. § 15-18-17 so long as the secretaries' salaries do not exceed the maximum allowed by the statute, and the secretaries have not received a merit increase during the past year. 1983 Op. Att'y Gen. No. U83-2.

No merit pay increase is authorized that would result in the secretary's state paid salary exceeding the maximum salary in the pay scale authorized by O.C.G.A. § 15-18-17 regardless of the number of pay increases that the state paid secretary of a district attorney has received. 1983 Op. Att'y Gen. No. 83-29.

15-18-18. Alternate hiring procedure for secretaries.

Reserved. Repealed by Ga. L. 2008, p. 577, § 9/SB 396, effective July 1, 2008.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 1506, § 3; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 15; Ga. L. 1997, p. 1319, § 11.

15-18-19. State paid personnel; salary schedules.

(a) All state paid personnel employed by the district attorneys pursuant to this article shall be employees of the judicial branch of state government in accordance with Article VI, Section VIII of the Constitution of Georgia and shall be in the unclassified service as defined by Code Section 45-20-2.

(b) Personnel employed by the district attorneys pursuant to this article shall have such authority, duties, powers, and responsibilities as are authorized by law or as assigned by the district attorney and shall serve at the pleasure of the district attorney.

(c) Subject to the provisions of this chapter, the Prosecuting Attorneys' Council of the State of Georgia shall, with the advice and consent of a majority of the district attorneys, adopt and amend uniform policies, rules, and regulations which shall apply to all state paid personnel employed by the district attorneys. Such policies, rules, and regulations may include provisions for the appointment, classification, promotion, transfer, demotion, leave, travel, records, reports, and training of personnel. Such policies, rules, and regulations shall be consistent with the duties, responsibilities, and powers of the district attorneys under the Constitution and laws of this state and the rules of the trial and appellate courts. Not less than 30 days prior to taking final action on any proposed policy, rule, or regulation adopted pursuant to this Code section, or any amendment thereto, the council shall transmit a copy of said policy, rule, regulation, or amendment to all district attorneys and the presiding officers of the Judiciary Committee of the House of Representatives and the Judiciary Committee of the Senate.

(d) District attorneys and state paid personnel employed by the district attorney shall be entitled to annual, sick, and other leave authorized by the policies, rules, or regulations adopted by the council pursuant to subsection (a) of this Code section. Subject to the provisions of Code Section 47-2-91, district attorneys who are members of either the District Attorneys' Retirement System or the Employees' Retirement System of Georgia shall also be entitled to receive creditable service for any forfeited annual or sick leave.

(e)(1) The council shall establish salary schedules for each such state paid position authorized by this article or any other provision of law.

Said salary schedules shall be similar to the general and special schedules applicable to state employees pursuant to the rules of the State Personnel Board and shall provide for a minimum entry step and not less than ten additional steps, not to exceed the maximum allowable salary. In establishing the salary schedule, all amounts will be rounded off to the nearest whole dollar. The council may, from time to time, revise the salary schedule to include across-the-board increases which the General Assembly may from time to time authorize in the General Appropriations Act.

(2) The district attorney shall fix the compensation of each state paid employee appointed pursuant to this article in accordance with the class to which such person is appointed and the appropriate step of the salary schedule.

(3) All salary advancements shall be based on quality of work, training, and performance. The salary of state paid personnel appointed pursuant to this article may be advanced one step at the first of the calendar month following the annual anniversary of such person's appointment. No employee's salary shall be advanced beyond the maximum established in the applicable pay schedule.

(4) Any reduction in salary shall be made in accordance with the salary schedule for such position and the policies, rules, or regulations adopted by the council.

(5) The compensation of state paid personnel appointed pursuant to this article shall be paid in equal installments by the Prosecuting Attorneys' Council of the State of Georgia as provided by this subsection from funds appropriated for such purpose. The council may authorize employees compensated pursuant to this Code section to participate in voluntary salary deductions as provided by Article 3 of Chapter 7 of Title 45.

(6) The governing authority of the county or counties comprising a judicial circuit may supplement the salary or fringe benefits of any state paid position appointed pursuant to this article.

(7) The governing authority of any municipality within the judicial circuit may, with the approval of the district attorney, supplement the salary or fringe benefits of any state paid position appointed pursuant to this article. (Ga. L. 1975, p. 1506, § 4; Code 1933, § 24-2919, enacted by Ga. L. 1977, p. 1257, § 8; Ga. L. 1997, p. 1319, § 12; Ga. L. 1999, p. 81, § 15; Ga. L. 2008, p. 577, § 10/SB 396; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-17/HB 642.)

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective

date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Hudson v. State, 248 Ga. 397, 283 S.E.2d 271 (1981).

15-18-20. Additional personnel as state employees.

(a) The district attorney in each judicial circuit may employ such additional assistant district attorneys, deputy district attorneys, or other attorneys, investigators, paraprofessionals, clerical assistants, victim and witness assistance personnel, and other employees or independent contractors as may be provided for by local law or as may be authorized by the governing authority of the county or counties comprising the judicial circuit. The district attorney shall define the duties and fix the title of any attorney or other employee of the district attorney's office.

(b) Personnel employed by the district attorney pursuant to this Code section shall serve at the pleasure of the district attorney and shall be compensated by the county or counties comprising the judicial circuit, the manner and amount of compensation to be paid to be fixed either by local Act or by the district attorney with the approval of the county or counties comprising the judicial circuit. (Code 1933, § 24-2919, enacted by Ga. L. 1977, p. 1257, § 8; Ga. L. 1992, p. 1020, § 1; Ga. L. 2000, p. 1521, § 4.)

JUDICIAL DECISIONS

Judicial denial of budget cuts deemed proper. — Trial court exercised proper caution in denying a requested writ of mandamus to require county commissioners to restore budget cuts for the district attorney's office. Wilson v. Southerland, 258 Ga. 479, 371 S.E.2d 382 (1988).

No provision allowing citizen to procure private practitioner to file appeal in name of state. — If the state, through the state's authorized legal arm, does not wish to appeal and takes no action in the matter, there is no provision of law allowing a private citizen to procure the services of a private practitioner to file appeals in the name of the state, that being the constitutional and statutory duty of the office of the district attorney. State v. Trice, 150 Ga. App. 588, 258 S.E.2d 270 (1979).

Special prosecutor may take part in prosecution of case on behalf of state, and by inference an appeal therefrom, if the prosecutor is subject to the direction and control of the district attorney. State v. Trice, 150 Ga. App. 588, 258 S.E.2d 270 (1979).

Special counsel not entitled to workers' compensation benefits. — Attorney appointed by district attorney as special counsel was an independent contractor and not entitled to workers' compensation benefits since the attorney was not appointed to serve as a full-time general employee of the district attorney, not-

withstanding the attorney's appointment, the attorney maintained the attorney's private law practice and the district attorney defined the attorney's duties as relating exclusively to the conduct of the criminal investigation of the local sheriff and the district attorney fixed the attorney's title as special counsel for that particular investigation, and the control of that investigation was intended to be in the hands of the attorney rather than of the district attorney. State v. Goolsby, 191 Ga. App. 161, 381 S.E.2d 299 (1989).

Cited in Hudson v. State, 248 Ga. 397, 283 S.E.2d 271 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Additional assistants are county employees. — Since the hiring of the employees is authorized by the county, and these employees are paid directly by the county, the employees are county employees. 1979 Op. Att'y Gen. No. U79-12.

Part-time assistant district attorneys. — District attorney may appoint a part-time assistant district attorney to prosecute traffic cases in the probate court if requested by the judge of the probate court. If the assistant is compensated solely by county funds, the assistant can engage in the private practice of law except as a conflict of interest may arise due to the assistant's responsibilities as an assistant district attorney. 1991 Op. Att'y Gen. No. U91-6.

15-18-20.1. Additional personnel for district attorney's office.

Notwithstanding any other provision of law, the governing authority of any county or municipality within the judicial circuit which provides additional personnel for the office of district attorney may contract with the Prosecuting Attorneys' Council of the State of Georgia to provide such additional personnel in the same manner as is provided for state paid personnel in this article. Any such personnel shall be considered state employees and shall be entitled to the same fringe benefits as other state paid personnel employed by the district attorney pursuant to this article. The governing authority of such county or municipality shall transfer to the council such funds as may be necessary to cover the compensation, benefits, travel, and other expenses for such personnel. (Code 1981, § 15-18-20.1, enacted by Ga. L. 1997, p. 1319, § 13; Ga. L. 2006, p. 414, § 4/HB 268.)

15-18-21. Qualifications of attorneys and investigators employed by district attorney.

(a) Any assistant district attorney, deputy district attorney, or other attorney at law employed by the district attorney who is compensated in whole or in part by state funds shall not engage in the private practice of law.

(b) Any assistant district attorney, deputy district attorney, or any other attorney at law employed by the district attorney shall be a member of the State Bar of Georgia, admitted to practice before the appellate courts of this state, shall serve at the pleasure of the district attorney, and shall have such authority, powers, and duties as may be assigned by the district attorney.

(c) Any investigator employed by the district attorney's office and authorized by the district attorney to carry weapons or to exercise any of the powers of a peace officer of this state shall meet the requirements of Chapter 8 of Title 35 and shall serve at the pleasure of the district attorney. (Code 1933, § 24-2919, enacted by Ga. L. 1977, p. 1257, § 8.)

Cross references. — Regulation of practice of law generally, § 15-19-50 et seq.

JUDICIAL DECISIONS

Appointed attorney not precluded from private practice. — Attorney appointed by a presiding judge as a part-time district attorney pro tempore assigned pursuant to O.C.G.A. § 15-18-27(a) to prosecute criminal acts allegedly committed by a district attorney and/or the district attorney's staff is not precluded from the private practice of criminal law for the duration of the appointment. State v. Redd, 243 Ga. App. 809, 534 S.E.2d 473 (2000).

Cited in Hudson v. State, 248 Ga. 397, 283 S.E.2d 271 (1981).

15-18-22. Use of third-year law students and law school staff instructors as legal assistants in criminal proceedings.

(a) This Code section shall be known and may be cited as "The Law School Public Prosecutor Act of 1970."

(b) With the increasing docket in criminal matters, it is in the public interest to provide legal assistance to district attorneys and, in connection therewith, to utilize the services of third-year law students and staff instructors in criminal proceedings as a form of legal intern training which will promote the efficiency of criminal proceedings.

(c) As used in this Code section, the term:

(1) "Criminal proceeding" means any investigation, grand jury, trial, or other legal proceeding by which a person's liability for a crime is investigated or determined, commencing with the investigation, return of an indictment, or filing of the accusation and including the final disposition of the case.

(2) "District attorney" means any district attorney of this state, the Attorney General, the director of the Prosecuting Attorneys' Council of the State of Georgia, or any solicitor-general or solicitor of a state, municipal, or recorder's court or any assistants of such officers.

(3) "Law school" means a law school within or outside this state which is approved by the American Bar Association or which is authorized to operate under Code Section 20-3-250.8 or which was chartered and began operation in this state prior to February 10, 1937, and continued in operation in this state on July 1, 1970.

(4) "Staff instructor" means a full-time professional staff instructor of a law school in this state who has been admitted to the bar of another state but who has not yet been admitted to the bar of this state.

(5) "Third-year law student" means a student regularly enrolled and in good standing in a law school within or outside this state who has satisfactorily completed at least two-thirds of the requirements for the first professional degree in law (J.D. or its equivalent) in not less than four semesters or six quarters of residence.

(d) An authorized third-year law student or staff instructor, when under the supervision of a district attorney, may assist in criminal proceedings within this state as if admitted and licensed to practice law in this state except that all indictments, presentments, pleadings, and other entries of record must be signed by a district attorney or by his duly appointed assistant and that, in the conduct of a grand jury investigation, trial, or other criminal proceeding, a district attorney or his duly appointed assistant must be physically present.

(e) A third-year law student or staff instructor may be authorized to assist a district attorney in such form and manner as the judge of the superior court may prescribe, taking care that the requirements of this Code section and the good moral character of the third-year student or staff instructor are properly certified by the dean of the law school. Before entering an order authorizing him to assist the district attorney, the judge shall further require of the student or instructor an oath similar to the oath required by a district attorney.

(f) As to each third-year law student or staff instructor authorized to assist a district attorney, there shall be kept on file in the office of the clerk of the superior court in the county where such authority is to be exercised the dean's certificate, the student's and instructor's oaths, and the judge's order as contemplated under subsection (e) of this Code section. The authority to assist a district attorney as allowed under this Code section shall extend for no longer than 18 months. If during this period any change occurs in the status of the student or instructor at the law school in which he or she was enrolled or employed, that is, if the student ceases his or her enrollment, is suspended, or is expelled or if the instructor ceases his or her employment or is released by the school, any such authority shall terminate and be revoked.

(g) Any third-year law student or staff instructor authorized to assist a district attorney under this Code section is not required to possess the qualifications for election or appointment to the office of district attorney or assistant district attorney as defined in Code Section 15-18-3. (Code 1933, § 9-401.2, enacted by Ga. L. 1970, p. 336, § 2; Ga. L. 1978, p. 1949, § 1; Ga. L. 1990, p. 8, § 15; Ga. L. 1990, p. 1166, § 1;

Ga. L. 1994, p. 313, §§ 1, 2; Ga. L. 1996, p. 748, § 4; Ga. L. 1997, p. 1319, § 14.)

Cross references. — Regulation of practice of law generally, § 15-19-50 et seq. Law school legal aid agencies, § 15-20-1 et seq. Third-year law students, Ga. Sup. Ct., Rules 91 — 96.

Law reviews. — For article, "See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum," see 26 Ga. St. U.L. Rev. 361 (2010). For annual survey on wills, trusts, guardianships, and fiduciary administration, see 65 Mercer L. Rev. 295 (2013).

JUDICIAL DECISIONS

Physical presence of district attorney not required. — Existing statutory framework constitutes an express authorization for a district attorney to delegate to the district attorney's assistants the performance of such of the district attorney's prosecutorial duties as the law formerly required that the district attorney personally perform; accordingly, any former requirement that a district attorney's "direction and control" of a prosecution be evinced by the district attorney's physical presence is now obviated. State v. Cook, 172 Ga. App. 433, 323 S.E.2d 634 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Student assistants not admitted and licensed in general sense. — Statement that the student may assist the district attorney "as if admitted and licensed" necessarily implies that the student has not actually been admitted and licensed; the fact that there are strict rules governing what a student prosecutor may and may not do makes it clear that, while the student is practicing law in the sense that the student is performing acts that a layman is not authorized to perform, the student has not thereby been admitted and licensed to practice law in a general sense. 1976 Op. Att'y Gen. No. 76-28.

Third-year practice does not affect eligibility for district attorney. — Third-year law student who serves as a legal assistant to a district attorney pursuant to former Code 1933, § 9-401.2 (see now O.C.G.A. § 15-18-22) does not thereby become "duly admitted and licensed to practice law in the superior courts" for the purposes of determining eligibility to the office of district attorney under former Code 1933, § 24-2901 (see now O.C.G.A. § 15-18-3). 1976 Op. Att'y Gen. No. 76-28.

RESEARCH REFERENCES

ALR. — Propriety and effect of law students acting as counsel in court suit, 3 ALR4th 358.

15-18-23. Office expenses.

The governing authority of the county or counties comprising each judicial circuit shall provide all offices, utilities, telephone expenses, materials, and supplies as may be necessary to equip, maintain, and furnish the office or offices of the district attorney in an orderly and

efficient manner. (Code 1933, § 24-2919, enacted by Ga. L. 1977, p. 1257, § 8.)

JUDICIAL DECISIONS

Judicial denial of budget cuts deemed proper. — Trial court exercised proper caution in denying a requested writ of mandamus to require county commissioners to restore budget cuts for the district attorney's office. Wilson v. Southerland, 258 Ga. 479, 371 S.E.2d 382 (1988).

Cited in Hudson v. State, 248 Ga. 397, 283 S.E.2d 271 (1981).

15-18-24. Liability of district attorney; failure to comply as ground for impeachment.

If a district attorney fails to comply with Code Section 15-18-6, he is liable to rule as are attorneys at law, with all the penalties and remedies applicable thereto. Failure to comply with the terms of a rule absolute within 20 days from the time it becomes final shall be a ground for impeachment. (Orig. Code 1863, § 352; Code 1868, § 413; Code 1873, § 378; Code 1882, § 378; Civil Code 1895, § 4393; Penal Code 1895, § 799; Civil Code 1910, § 4927; Penal Code 1910, § 799; Code 1933, § 24-2911.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 14.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, §§ 30, 31, 69.

ALR. — Pendency of impeachment proceeding as affecting power of officer, 30 ALR 1149.

Disciplinary action against attorney for misconduct related to performance of official duties as prosecuting attorney, 10 ALR4th 605.

15-18-25. Fine for failure to attend courts.

If a district attorney fails to attend on the courts of his circuit as required, without just cause, he is liable to be fined $50.00 for each failure, to be retained out of his salary. (Orig. Code 1863, § 353; Code 1868, § 414; Code 1873, § 379; Code 1882, § 379; Civil Code 1895, § 4394; Penal Code 1895, § 800; Civil Code 1910, § 4928; Penal Code 1910, § 800; Code 1933, § 24-2912; Ga. L. 1991, p. 135, § 3.)

15-18-26. Taking money or thing of value in exchange for official actions; ground for impeachment.

If a district attorney takes or agrees to take from any person money or any other valuable thing which is not authorized by law, the consideration whereof is a promise or undertaking to procure or to try to procure a finding by the grand jury of a "true bill" or "no bill" upon an

indictment, or to make or not to make a presentment, or to postpone or delay a state case or an arrest, or to advise that it be done or how it may be done, and an indictment is handed down or a presentment is made to this effect, the district attorney shall be disqualified from further discharging his or her official duties until a trial is had upon the indictment or presentment. If the trial results in a conviction, he or she shall be fined and imprisoned, at the discretion of the court. Such a conviction is also a ground for impeachment. The disqualification shall continue until the adjournment of the next session of the General Assembly. It shall be the duty of the clerk of the court to certify immediately such proceedings to the Governor. (Orig. Code 1863, §§ 355, 356, 357; Code 1868, §§ 416, 417, 418; Code 1873, §§ 381, 382, 383; Code 1882, §§ 381, 382, 383; Penal Code 1895, §§ 802, 803, 804; Penal Code 1910, §§ 802, 803, 804; Code 1933, §§ 24-2916, 24-2917; Ga. L. 2000, p. 1115, § 2.)

JUDICIAL DECISIONS

Cited in Nichols v. State, 17 Ga. App. 593, 87 S.E. 817 (1916).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 14.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, §§ 62, 63.

ALR. — Pendency of impeachment proceeding as affecting power of officer, 30 ALR 1149.

Disciplinary action against attorney for misconduct related to performance of official duties as prosecuting attorney, 10 ALR4th 605.

15-18-27. Allegation of indictable offense committed by district attorney or staff member; procedure if true bill found.

(a) When any person makes an affidavit before a judge of the superior court which alleges that the district attorney or a member of the staff of the district attorney has committed an indictable offense and the court finds that there is probable cause to believe that the accused has committed the alleged offense or the grand jury files a sealed report with the presiding judge that the grand jury has found reasonable grounds to believe that the district attorney or a member of the staff of the district attorney has committed such an offense and intends to proceed as provided in Code Sections 45-11-4 and 45-15-11, it shall be the duty of the court to notify the Attorney General as provided in Code Section 15-18-5.

(b) If a true bill is found, the case shall proceed as other criminal cases and upon conviction shall proceed as provided by Code Section 45-5-6.1. (Orig. Code 1863, § 360; Code 1868, § 421; Code 1873, § 386;

Code 1882, § 386; Penal Code 1895, § 807; Penal Code 1910, § 807; Code 1933, § 24-2918; Ga. L. 1996, p. 382, § 4; Ga. L. 2002, p. 1211, § 2.)

JUDICIAL DECISIONS

Appointed attorney not precluded from private practice. — Attorney appointed by a presiding judge as a part-time district attorney pro tempore assigned pursuant to subsection (a) of O.C.G.A. § 15-18-27 to prosecute criminal acts allegedly committed by a district attorney and/or the district attorney's staff is not precluded from the private practice of criminal law for the duration of the appointment. State v. Redd, 243 Ga. App. 809, 534 S.E.2d 473 (2000).

RESEARCH REFERENCES

ALR. — Validity, under state law, of appointment of special prosecutor where regular prosecutor is charged with, or being investigated for, criminal or impeachable offense, 84 ALR3d 115.

15-18-28. Personnel positions continuation after April 11, 1990.

(a) Notwithstanding any other provisions of law to the contrary, each personnel position in the office of a district attorney, which position exists or was created or authorized on or after April 11, 1990, whether pursuant to the provisions of Code Section 15-18-14, 15-18-14.1, or 15-18-17 or pursuant to any general or local Act applicable to a judicial circuit or any county thereof, shall continue to exist or be authorized within such judicial circuit until otherwise provided by law.

(b) For purposes of this subsection, a personnel position shall be each personnel position in the office of a district attorney which is continued pursuant to subsection (a) of this Code section. Notwithstanding any other provisions of law to the contrary, if a judicial circuit, or portion thereof, is merged with, consolidated with, or otherwise becomes a part of:

(1) Only one other judicial circuit, that other judicial circuit shall have transferred to it those personnel positions for the judicial circuit, or portion thereof, which has been merged with, consolidated with, or otherwise become a part of it; or

(2) More than one other judicial circuit, those other judicial circuits shall have equitably allocated to them by the Prosecuting Attorneys' Council of the State of Georgia those personnel positions for the judicial circuit, or portion thereof, which has been merged with, consolidated with, or otherwise become a part of them. (Code 1981, § 15-18-28, enacted by Ga. L. 1990, p. 1363, § 1; Ga. L. 1991, p. 94, § 15.)

15-18-29. Honorary office of district attorney emeritus.

(a) There is created the honorary office of district attorney emeritus of the State of Georgia. Any district attorney of this state who retires under honorable conditions after having served as a prosecuting attorney for 20 or more years shall automatically hold the honorary office of district attorney emeritus of the State of Georgia.

(b) Any person holding the honorary office of district attorney emeritus of the State of Georgia shall, upon application to the Secretary of State, be issued a special certificate evidencing such honorary office.

(c) The honorary office of district attorney emeritus of the State of Georgia shall not constitute the holding of public office or public employment for the purpose of any other law of this state.

(d) The provisions of this Code section shall not affect the status or duties of any person appointed district attorney emeritus or solicitor-general emeritus pursuant to Article 4 of Chapter 12 of Title 47. (Code 1981, § 15-18-29, enacted by Ga. L. 1999, p. 913, § 1.)

Cross references. — Classes of membership, Rules and Regulations for the Organization and Government of the State Bar of Georgia, Rule 1-202.

15-18-30. Temporary assistance of retired prosecuting attorney.

(a) As used in this Code section, "retired prosecuting attorney" means a retired district attorney, assistant district attorney, solicitor-general, assistant solicitor-general, or retired attorney from the staff of the Department of Law or the Prosecuting Attorneys' Council of the State of Georgia who is receiving benefits under Title 47 or is retired in good standing and receiving benefits from a county or municipal retirement system and who has a minimum of ten years of service in any combination of such offices.

(b) In addition to any other provision of law, if a district attorney determines that the business of the court requires the temporary assistance of any retired prosecuting attorney, that district attorney may make a request for assistance to the chairperson of the Prosecuting Attorneys' Council of the State of Georgia under such guidelines as the council may adopt. Subject to funds being available for such purpose and in accordance with such guidelines as the council may prescribe, the chairperson may approve the temporary assistance requested.

(c) If a district attorney is disqualified pursuant to Code Section 15-18-5, the Attorney General may appoint a retired district attorney as district attorney pro tempore subject to the provisions of subsection (d) of this Code section. The order appointing the district attorney pro tempore shall identify the court in need of assistance, the county where

located, the time period covered, the specific case or cases for which assistance is sought, if applicable, and the reason that assistance is needed. A copy of the order shall be submitted to the chairperson of the Prosecuting Attorneys' Council of the State of Georgia.

(d) A retired prosecuting attorney who provides temporary assistance under this Code section or who is appointed as district attorney pro tempore pursuant to Code Section 15-18-5 may receive compensation from state funds for each day of service in an amount to be fixed by the council and not to exceed the annual state salary for the position from which such person retired, divided by 235. In addition to such compensation, such retired district attorney shall be reimbursed for actual expenses as provided by Code Section 15-18-12. Such compensation and expenses shall be paid by the council from state funds appropriated or otherwise available for the operation of the office of district attorney, upon a certificate by the district attorney, or in the case of a district attorney pro tempore by the Attorney General, as to the number of days served or the expenses incurred. No person subject to the provisions of this Code section shall serve for more than 1,040 hours in any calendar year, and no such person shall be eligible for employee health benefits other than those available to him or her as a part of his or her retirement benefits or for any annual leave, any sick leave, or any other employee benefits available to a state employee except those which are available to him or her as a retired employee. In the event of any conflict, the provisions of Title 47 shall prevail over any provision of this Code section. (Code 1981, § 15-18-30, enacted by Ga. L. 1999, p. 913, § 1; Ga. L. 2002, p. 1211, § 3.)

15-18-31. Referrals to defensive driving programs.

When a prosecuting attorney determines that prosecution of a traffic offense, or municipal ordinance involving a traffic offense, is or is not warranted, and regardless of whether a court order is entered for such offense or a referral is made to a pretrial intervention, pretrial release, pretrial diversion program, or other similar pretrial program, a prosecuting attorney may condition any other action regarding such offense upon the satisfactory completion of a defensive driving course or defensive driving program approved by the Department of Driver Services but shall not be authorized to mandate the completion of any other driving program. (Code 1981, § 15-18-31, enacted by Ga. L. 2014, p. 710, § 1-2/SB 298.)

Effective date. — This Code section became effective July 1, 2014.

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Mentally Impaired Persons, § 141.

ARTICLE 2

PROSECUTING ATTORNEYS' COUNCIL

Editor's notes. — By resolution (Ga. L. 1986, p. 1204), the General Assembly urged certain public organizations and state agencies to develop programs for the education and training of social services and criminal justice professionals in the areas of child abuse, sexual abuse, and sexual exploitation.

15-18-40. Prosecuting Attorneys' Council established; purpose and functions.

(a) The Prosecuting Attorneys' Council of the State of Georgia is established.

(b) It shall be the purpose of the council to assist the prosecuting attorneys throughout the state in their efforts against criminal activity in the state; such assistance may include:

(1) The obtaining, preparation, supplementation, and dissemination of indexes to and digests of the decisions of the Supreme Court and the Court of Appeals of Georgia and other courts, statutes, and legal authorities relating to criminal matters;

(2) The preparation and distribution of a basic prosecutor's manual and other educational materials;

(3) The preparation and distribution of model indictments, search warrants, interrogation devices, and other common and appropriate documents employed in the administration of criminal justice at the trial level;

(4) The promotion of and assistance in the training of prosecuting attorneys;

(5) The provision of legal research assistance to prosecuting attorneys;

(6) The provision of such assistance to law enforcement agencies as may be lawful; and

(7) The provision of such other assistance to prosecuting attorneys as may be authorized by law.

(c) The council:

(1) Shall be the fiscal officer for the prosecuting attorneys and shall prepare and submit budget estimates of state appropriations neces-

sary for the maintenance and operation of the district attorneys' and solicitors-general's offices; and

(2) From such funds as may be appropriated or otherwise available for the operation of prosecuting attorneys, may provide such administrative functions, services, supplies, equipment, or operating expenses as may be necessary for the fulfillment of the duties and responsibilities of such prosecuting attorneys and may contract with any other department, bureau, agency, commission, institution, or authority of this state or any other entity for such purpose.

(d) Effective July 1, 2008, the ministerial functions of the commissioner of administrative services or of the Department of Administrative Services relating to the payment of salaries, benefits, and expenses for district attorneys and district attorney personnel appointed pursuant to Article 1 of this chapter or solicitors-general shall be transferred to and performed by the council. (Ga. L. 1975, p. 1623, § 1; Ga. L. 1997, p. 1319, § 15; Ga. L. 2008, p. 577, §§ 11, 12/SB 396.)

15-18-41. Composition of council; election and term of office; filling of vacancies; removal.

(a) The council shall be composed of nine members, six of whom shall be district attorneys and three of whom shall be solicitors or solicitors-general of courts of record.

(b) The initial six district attorney members of the council shall be selected with two members being appointed for a term of four years, two members being appointed for a term of three years, and two members being appointed for a term of two years. The initial three solicitor or solicitor-general members shall be selected with one member being appointed for a term of three years and one member being appointed for a term of two years.

(c) Following the terms of the initial members who take office on July 1, 1975, the term of office of each member of the council shall be for a period of four years. Immediately prior to the expiration of a member's term of office as a member, the council shall elect a new member to succeed the member whose term is expiring. Members of the council shall take office on the first day of July following their election as a member. No prosecutor member of the council shall be eligible to succeed himself for a consecutive term as a member.

(d) In the event a vacancy occurs in the prosecutor membership of the council as a result of death, resignation, removal, or failure of reelection as a prosecutor, the remaining members of the council shall elect a qualified person to serve for the remainder of the unexpired term of the member whose seat is vacant. The person elected to fill such vacancy shall take office immediately upon his election.

(e) The council may, by two-thirds' vote of the members, remove any member of the council for failure to attend meetings, misconduct, incompetency, or neglect of duty. (Ga. L. 1975, p. 1623, § 3; Ga. L. 1996, p. 748, § 5; Ga. L. 2008, p. 577, § 13/SB 396.)

15-18-42. Meetings; officers; reimbursement for expenses.

(a) The council shall meet at such times and places as it shall determine necessary or convenient to perform its duties.

(b) The council shall annually elect a chairman and such other officers as it shall deem necessary and shall adopt such rules for the transaction of its business as it shall desire.

(c) The members of the council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the council. (Ga. L. 1975, p. 1623, § 4.)

15-18-43. Members not ineligible for office.

Notwithstanding any other provision of law, no councilmember shall be ineligible to hold the office of district attorney, solicitor-general, district attorney emeritus, or solicitor-general emeritus by virtue of his or her position as a member of the council. (Ga. L. 1975, p. 1623, § 5; Ga. L. 1990, p. 8, § 15; Ga. L. 1996, p. 748, § 6; Ga. L. 2012, p. 775, § 15/HB 942.)

15-18-44. Powers and duties; employees' bonds; audits.

(a) The Prosecuting Attorneys' Council of the State of Georgia:

(1) Shall be a legal entity;

(2) Shall have perpetual existence;

(3) May contract;

(4) May own property;

(5) May accept funds, grants, and gifts from any public or private source, which shall be used to defray the expenses incident to implementing its purposes;

(6) May adopt and use an official seal;

(7) May establish a principal office;

(8) May hire such administrative and clerical personnel as may be necessary and appropriate to fulfill its purposes; and

(9) Shall have such other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes.

(b) The council shall require a sufficient bond, signed by some surety or guaranty company authorized to do business in this state, of any administrative or clerical personnel employed by the council and empowered by the council to handle its funds. The premiums due on all such bonds may be paid by the council from funds available to it.

(c) The council shall establish such auditing procedures as may be required in connection with the handling of public funds. The state auditor is authorized and directed to make an annual audit of the transactions of the council and to make a complete report of the same to the General Assembly. The state auditor shall not be required to distribute copies of the report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. The report shall disclose all moneys received by the council and all expenditures made by the council, including administrative expense. The state auditor shall also make an audit of the affairs of the council at any time when requested to do so by a majority of the council or by the Governor. (Ga. L. 1975, p. 1623, § 2; Ga. L. 1985, p. 149, § 15; Ga. L. 1990, p. 8, § 15; Ga. L. 1991, p. 1781, § 1; Ga. L. 2005, p. 1036, § 13/SB 49; Ga. L. 2008, p. 324, § 15/SB 455; Ga. L. 2008, p. 577, § 14/SB 396.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2008, p. 324, § 15/SB 455, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 577, § 14/SB 396. See County of Butts v. Strahan, 151 Ga. 417 (1921).

15-18-45. Authorization to conduct or approve training programs; requirements for designated special drug prosecutor.

(a) The council shall be authorized to conduct or approve for credit or reimbursement, or both, basic and continuing legal education courses or other appropriate training programs for the district attorneys, solicitors-general, and other prosecuting attorneys of this state and the members of the staffs of such officials. The council, in accordance with such rules as it shall adopt, shall be authorized to provide reimbursement, in whole or in part, for the actual expenses incurred by any district attorney, solicitor-general, or other prosecuting attorney of this state or any member of the staffs of such officials in attending any such approved course or training program from such funds as may be appropriated or otherwise made available to the council. Notwithstanding any other provision of law, such officials and members of their staffs shall be authorized to receive reimbursement for actual expenses incurred in attending approved courses or training programs, provided

that no person shall be entitled to claim reimbursement under both this Code section and Code Section 15-18-12. The council shall adopt such rules governing the approval of courses and training programs for credit or reimbursement as may be necessary to administer this Code section properly.

(b) Each person designated as a special drug prosecutor pursuant to paragraph (2) of subsection (a) of Code Section 15-18-14 shall complete an initial training program prescribed by the Prosecuting Attorneys' Council of the State of Georgia within 12 months of such employment and such in-service training as the council shall by rule prescribe. (Ga. L. 1978, p. 2028, § 1; Ga. L. 1996, p. 748, § 7; Ga. L. 1999, p. 365, § 3; Ga. L. 2001, p. 4, § 15.)

Editor's notes. — Ga. L. 1999, p. 365, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Special Drug Prosecutor Act.'"

Law reviews. — For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 56 (1999).

15-18-46. Prohibited activities.

Anything in this article to the contrary notwithstanding, the Prosecuting Attorneys' Council of the State of Georgia may not exercise any power, undertake any duty, or perform any function assigned by law to the Governor of this state, the Attorney General, any district attorney, or any solicitor or solicitor-general of any court of record in this state. (Ga. L. 1975, p. 1623, § 6; Ga. L. 1996, p. 748, § 8.)

15-18-47. Qualifications, authority, and duties.

Attorneys and investigators employed by the council shall meet the same qualifications as those provided by Code Section 15-18-21 for attorneys and investigators employed by district attorneys. Such attorneys and investigators shall take and subscribe to an oath similar to the oath required by district attorneys. When assisting a district attorney, solicitor-general, or the Attorney General, such attorneys and investigators shall have the same authority and power as an attorney or investigator employed by such district attorney, solicitor-general, or the Attorney General. Investigators employed by the council and authorized by the council to carry weapons or to exercise any of the powers of a peace officer of this state shall meet the requirements of Chapter 8 of Title 35. (Code 1981, § 15-18-47, enacted by Ga. L. 2008, p. 577, § 15/SB 396.)

ARTICLE 3

SOLICITORS-GENERAL OF STATE COURTS

Editor's notes. — Ga. L. 1996, p. 748, § 27, not codified by the General Assembly, provides: "Notwithstanding any other provision of law, an Act approved February 11, 1854 (Ga. L. 1854, p. 281), which abolished the office of solicitor of the City Court of Savannah, now the State Court of Chatham County, and transferred responsibility for the prosecution of criminal cases in said court to the solicitor general (now the district attorney) for the Eastern Judicial Circuit is confirmed. It shall be the duty of said district attorney to prosecute all criminal actions in said state court until otherwise specifically provided by law."

Ga. L. 1996, p. 748, § 28, not codified by the General Assembly, provides: "The provisions of this Act shall not affect the powers, duties, or responsibilities of the district attorney as successor to the office of solicitor general under the constitution, statutes, and common law of this state as provided by Code Section 15-18-1."

Ga. L. 1996, p. 748, § 29, not codified by the General Assembly, provides: "Except as otherwise authorized in this Act, on and after July 1, 1996, any reference in general law or in any local Act to the solicitor of a state court shall mean and shall be deemed to mean the solicitor-general of such state court."

Ga. L. 1996, p. 748, § 30, not codified by the General Assembly, provides in subsection (b): "The provisions of paragraph (3) of Code Section 15-18-62, relating to the qualifications for the office of solicitor-general of a state court, shall apply to any person elected or appointed to such office after July 1, 1996. Any person holding such office on July 1, 1996, may continue to hold such office for the remainder of the term to which such person was elected or appointed notwithstanding the fact that such person has not been a member of the State Bar of Georgia for three years if such person is otherwise qualified to hold the office of solicitor-general."

15-18-60. Establishment of solicitor-general; term; vacancies; service by district attorney; multicounty service.

(a)(1) Except as otherwise provided in this article, there shall be a solicitor-general of each state court who shall be elected for a four-year term and commissioned by the Governor as provided by law. This chapter shall not apply to a city court where the judges or solicitor is appointed by the mayor of a city.

(2) Except as provided in paragraph (3) of this subsection or subsection (c) of this Code section, any person holding the office of solicitor of a state court on July 1, 1996, shall become the solicitor-general of such court by operation of law and shall serve for the remainder of the term for which he or she was elected or appointed.

(3) Except as provided in subsection (c) of this Code section, any person holding the office of solicitor of a state court on July 1, 1996, may elect to continue to be styled as the solicitor of such court for so long as such person continues to hold such office. Such election shall be made in writing within 30 days following July 1, 1996, by filing a notice of such election with the clerk of the state court and the

superintendent of elections for such county or counties. Such election shall remain in effect either until such person withdraws such election in writing subsequently, which withdrawal shall be irrevocable, or until such person ceases to serve as solicitor, whichever occurs first, at which time paragraph (2) of this subsection shall become effective. It shall be the duty of the superintendent of elections to furnish a copy of the notice of such election to the Secretary of State within 30 days of receiving the same.

(b) In the event of a vacancy in the office of solicitor-general of the state court for any reason except the expiration of the term of office, the Governor shall appoint a qualified person who shall serve as provided in Article VI, Section VII, Paragraphs III and IV of the Constitution.

(c)(1) The General Assembly may by local law provide that the district attorney of the judicial circuit shall represent the state in all criminal prosecutions brought in a state court in lieu of creating a separate solicitor-general for the state court.

(2) Except as otherwise specifically provided in Article 1 of this chapter, such district attorney shall have the same duties and authority under this article as any solicitor-general.

(3) The county governing authority may supplement the compensation and fringe benefits of the district attorney and any personnel of the district attorney who support the prosecution of criminal cases in the state court of such county.

(4) Notwithstanding any other provision of law, if the General Assembly has provided by local law for an assistant district attorney to be designated or appointed as solicitor of a state court, such power, duty, and authority to prosecute in the state court is vested in the district attorney of the judicial circuit in which such county is located, as provided in this subsection. The provisions of this article shall not affect the compensation of an assistant district attorney previously designated as a solicitor of a state court so long as such assistant is assigned to prosecute criminal cases in the state court.

(d) The General Assembly may by local law authorize a solicitor-general of state court to represent the state in more than one county within a judicial circuit. The solicitor-general of a multicounty state court shall be selected as provided by local law. (Code 1981, § 15-18-60, enacted by Ga. L. 1996, p. 748, § 2; Ga. L. 2002, p. 415, § 15.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "July 1, 1996," was substituted for "the effective date of this article" in paragraph (a)(2) and throughout paragraph (a)(3) and "election to" was substituted for "election with" in the fourth sentence of paragraph (a)(3).

JUDICIAL DECISIONS

Cited in Perdue v. Palmour, 278 Ga. 217, 600 S.E.2d 370 (2004).

15-18-61. Oath.

In addition to the oaths prescribed by Chapter 3 of Title 45, relating to official oaths, the solicitor-general shall take and subscribe to the following oath:

"I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or affection discharge my duties as solicitor-general of (here state the county) County."

(Code 1981, § 15-18-61, enacted by Ga. L. 1996, p. 748, § 2.)

15-18-62. Requirements.

Except as provided in subsection (c) of Code Section 15-18-60, each solicitor-general of the state court must:

(1) Upon taking office, permanently reside within the judicial circuit containing the geographic area in which such person shall serve;

(2) Be at least 25 years of age; and

(3) Have been admitted and licensed to practice law in the State of Georgia for at least three years. (Code 1981, § 15-18-62, enacted by Ga. L. 1996, p. 748, § 2.)

Editor's notes. — Ga. L. 1996, p. 748, § 30, not codified by the General Assembly, provides in subsection (b): "The provisions of paragraph (3) of Code Section 15-18-62, relating to the qualifications for the office of solicitor-general of a state court, shall apply to any person elected or appointed to such office after July 1, 1996. Any person holding such office on July 1, 1996, may continue to hold such office for the remainder of the term to which such person was elected or appointed notwithstanding the fact that such person has not been a member of the State Bar of Georgia for three years if such person is otherwise qualified to hold the office of solicitor-general."

15-18-63. Part-time and full-time solicitors-general and employees; private practice of law.

(a) The General Assembly by local law shall determine whether the solicitor-general shall be a full-time or part-time solicitor-general.

(b) A full-time solicitor-general of the state court or any full-time employees of the solicitor-general shall not engage in the private practice of law.

(c) A part-time solicitor-general of the state court and any part-time assistant solicitor-general may engage in the private practice of law but shall not represent defendants in criminal matters in such solicitor-general's state court or appear on behalf of any client, other than the state, in any matter that is within the duties of such solicitor-general. (Code 1981, § 15-18-63, enacted by Ga. L. 1996, p. 748, § 2; Ga. L. 2013, p. 674, § 1/SB 96.)

The 2013 amendment, effective July 1, 2013, in subsection (b), substituted "shall not engage" for "may not engage"; and, in subsection (c), substituted "law but shall not represent defendants in criminal matters" for "law, but may not practice" near the middle and substituted "or appear on behalf of any client, other than the state, in any matter that is within the duties of such solicitor-general" for "or appear in any matter in which that solicitor-general has exercised jurisdiction" at the end.

JUDICIAL DECISIONS

Cited in State v. Redd, 243 Ga. App. 809, 534 S.E.2d 473 (2000); Nel v. State, 252 Ga. App. 761, 557 S.E.2d 44 (2001).

15-18-64. Leave of absence; ordered military duty.

(a) The solicitor-general and employees of any such solicitor-general shall be entitled to a leave of absence from court to participate in continuing education programs as provided in Code Section 15-1-11 and Article 2 of this chapter.

(b)(1) Any solicitor-general of a state court who is performing ordered military duty, as defined in Code Section 38-2-279, shall be eligible for reelection in any election, primary or general, which may be held to elect a successor for the next term of office and may qualify in absentia as a candidate for reelection to such office.

(2) Where the giving of written notice of candidacy is required, any solicitor-general of a state court who is performing ordered military duty may deliver such notice by mail or messenger to the proper elections official. Any other act required by law of a candidate for public office may, during the time such official is on ordered military duty, be performed by an agent designated by the absent public official. (Code 1981, § 15-18-64, enacted by Ga. L. 1996, p. 748, § 2.)

15-18-65. Disqualification; solicitor-general pro tempore.

(a) When a solicitor-general's office is disqualified from interest or relationship to engage in the prosecution of a particular case or cases, such solicitor-general shall notify the Attorney General of the disqualification. Upon receipt of such notification, the Attorney General shall

request the services of and thereafter appoint a solicitor-general, a district attorney, a retired prosecuting attorney as provided in Code Section 15-18-30, or other competent attorney to act in place of the solicitor-general, or may designate an attorney from the Department of Law. The appointment of the solicitor-general pro tempore shall specify in writing the name of the case or cases to which such appointment shall apply.

(b) A private attorney acting as solicitor-general pro tempore pursuant to subsection (a) of this Code section shall be duly sworn and subject to all laws governing prosecuting attorneys. Such solicitor-general pro tempore shall be compensated in the same manner as appointed counsel in the county.

(c) A solicitor-general of another county or a district attorney who is designated as a solicitor-general pro tempore, any assistant designated by such solicitor-general pro tempore to prosecute such case or cases, or employee of the Department of Law shall not receive any additional compensation for such services; provided, however, that the actual expenses incurred by the solicitor-general pro tempore or members of the solicitor-general pro tempore's staff shall be reimbursed by the county in which said solicitor-general or district attorney is acting as solicitor-general pro tempore at the same rate as provided in Code Section 15-18-12 for district attorneys.

(d) Any order entered by a court disqualifying a solicitor-general's office from engaging in the prosecution shall specify the legal basis of such order. The solicitor-general may, on behalf of the state and prior to the defendant in a criminal case being put in jeopardy, apply for a certificate of immediate review as provided in Code Section 5-7-2, and such order shall be subject to appellate review as provided by Chapter 7 of Title 5. (Code 1981, § 15-18-65, enacted by Ga. L. 1996, p. 748, § 2; Ga. L. 2002, p. 1211, § 4.)

JUDICIAL DECISIONS

Disclosure of conflict not required. — There is nothing in O.C.G.A. § 15-18-65 that requires that when a prosecutor seeks disqualification or appointment of a special prosecutor based upon a conflict of interest on the part of the prosecutor, that the prosecutor's conflict of interest must be disclosed to the defendant. Nel v. State, 252 Ga. App. 761, 557 S.E.2d 44 (2001).

15-18-66. Duties; authority.

(a) The duties of the solicitors-general within their respective counties are:

(1) To attend each session of the state court when criminal cases are to be heard unless excused by the judge thereof and to remain until the business of the state is disposed of;

(2) To administer the oaths required by law to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the court as may be necessary;

(3) To file accusations on such criminal cases deemed prosecutable and, subject to paragraph (10) of subsection (b) of this Code section, to prosecute all accused offenses;

(4) To attend before the appellate courts when any criminal case in which the solicitor-general represents the state is heard, to argue the same, and to perform any other duty therein which the interest of the state may require; and

(5) To perform such other duties as are or may be required by law or which necessarily appertain to their office.

(b) The authority of the solicitors-general shall include but is not limited to the following:

(1) To review and, if necessary, investigate all criminal cases which may be prosecuted in state court;

(2) When authorized by law, to represent the interests of the state in all courts of inquiry within the county in any matter wherein misdemeanor offenses are heard;

(3) When authorized by the local governing authority, to be the prosecuting attorney of any municipal court, recorder's court, or probate court;

(4) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 and when authorized by law to prosecute or defend any civil action in the state court in the prosecution or defense of which the state is interested, unless otherwise specially provided for;

(5) To reduce to judgment any fine, forfeiture, or restitution imposed by the state court as part of a sentence in a criminal case or forfeiture of a recognizance which is not paid in accordance with the order of the court. The solicitor-general may institute such civil or criminal action in the courts of this state or of the United States or any of the several states, to enforce said judgment against the property of the defendant;

(6) To prosecute on behalf of the state any criminal action which is removed from the state court to a United States district court pursuant to Chapter 89 of Title 28 of the United States Code. The expenses incurred by the solicitor-general as actual costs in the prosecution of any such case shall be paid by the county;

(7) To represent the state or any officer or agent of the county in a superior court in any habeas corpus action arising out of any criminal

proceeding in the state court, except in those cases in which the commissioner of public safety is named as a party;

(8) At the request of any district attorney or solicitor-general, to prosecute or assist in the prosecution of any criminal or civil action and when acting in such capacity a solicitor-general shall have the same authority and power as the requesting prosecutor;

(9) To request and utilize the assistance of any solicitor-general, assistant solicitor-general, district attorney, assistant district attorney, or other attorney employed by an agency of this state or its political subdivisions or authorities in the prosecution of any criminal or civil action;

(10) To enter a nolle prosequi on any accusation, citation, or summons filed and pending or on any indictment pending in the state court as provided by law. No accusation, citation, or summons shall be considered filed unless such filing has been done with the consent, direction, or approval of the solicitor-general. Further, no notice of arraignment shall be given prior to such filing without the solicitor-general's consent, direction, or approval. Prior to the filing of an accusation, citation, or summons, the solicitor-general shall have the same authority and discretion as district attorneys over criminal cases within their jurisdiction;

(11) To request the magistrate to schedule within a reasonable time a preliminary probable cause hearing in any pending misdemeanor case prior to the filing of an accusation and to represent the interests of the state at such hearing; and

(12) To exercise such authority as may be permitted by law or which necessarily appertains to their office.

(c) The provisions of this Code section shall not be deemed to restrict, limit, or diminish any authority or power granted to a solicitor-general by local Act. (Code 1981, § 15-18-66, enacted by Ga. L. 1996, p. 748, § 2; Ga. L. 2012, p. 53, § 2/SB 352; Ga. L. 2012, p. 775, § 15/HB 942.)

U.S. Code. — Chapter 89, Title 28 of the United States Code, referred to in this Code section, governs district courts and the removal of cases from state courts, and is codified at 28 U.S.C. § 1441 et seq.

JUDICIAL DECISIONS

Nolle prosequi. — Second sentence of O.C.G.A. § 15-18-66(b)(10) modifies the first sentence of the subsection to mean that solicitors are authorized to enter nolle prosequis on those accusations that have been filed with the trial courts at their direction; thus, the trial court erred in relying upon the subsection to rule that uniform traffic citations were not officially filed for purposes of the accused's right to file a speedy trial demand. Hayek v. State, 269 Ga. 728, 506 S.E.2d 372 (1998).

Solicitor general is representative of the state. — Petitioner had at least

one basis for claiming that an application for writ of habeas corpus was properly served as the petitioner served the petition on the solicitor general of the county where the misdemeanor conviction was entered and the solicitor general of the state court was the proper representative of the state in an action attacking such a conviction by means of an application for writ of habeas corpus; thus, the trial court did not err in declining to dismiss the petition for insufficiency of service. State v. Jaramillo, 279 Ga. 691, 620 S.E.2d 798 (2005).

Cited in State v. Rish, 222 Ga. App. 729, 476 S.E.2d 50 (1996); Shire v. State, 225 Ga. App. 306, 483 S.E.2d 694 (1997); Meservey v. State, 230 Ga. App. 382, 496 S.E.2d 518 (1998); State v. Johnson, 257 Ga. App. 162, 570 S.E.2d 627 (2002).

15-18-67. Compensation.

(a) Solicitors-general of state courts shall be compensated from county funds as provided by local law.

(b) The county governing authority is authorized to supplement the minimum compensation to be paid to the solicitor-general of the state court of that county as provided by local law, but no solicitor-general's compensation or supplement shall be decreased during his or her term of office. (Code 1981, § 15-18-67, enacted by Ga. L. 1997, p. 1319, § 18.)

JUDICIAL DECISIONS

Compensation dispute. — Trial court correctly held that a county solicitor general was improperly compensated beginning in July 2007 but erred in calculating the back pay due to the solicitor-general as of January 1, 2009, based on an amended local law because the amended local law irreconcilably conflicted with O.C.G.A. § 15-18-67(b), which prohibited the reduction of a solicitor-general's compensation during the solicitor-general's term of office. Inagawa v. Fayette County, 291 Ga. 715, 732 S.E.2d 421 (2012).

15-18-68. Reimbursement for expenses.

Unless otherwise provided by law, the solicitor-general and county paid personnel employed by the solicitor-general shall be entitled to be reimbursed for actual expenses incurred in the performance of their official duties in the same manner and rate as other county employees. (Code 1981, § 15-18-68, enacted by Ga. L. 1996, p. 748, § 2.)

15-18-69. Payment of costs and fees by state.

The bill of costs or filing fees of any appeals or applications filed in the Supreme Court or the Court of Appeals on behalf of the state by the solicitor-general shall be paid by the state as provided in Code Section 15-18-13. (Code 1981, § 15-18-69, enacted by Ga. L. 1996, p. 748, § 2.)

15-18-70. Chief or acting assistant solicitor-general.

(a) In any solicitor-general's office in which the solicitor-general is authorized to employ two or more assistant solicitors-general, the

solicitor-general may designate in writing an assistant solicitor-general as the chief assistant solicitor-general. In addition to such assistant solicitor-general's other duties, the chief assistant solicitor-general shall have such administrative and supervisory duties as may be assigned by the solicitor-general.

(b)(1) If the solicitor-general is unable to perform the duties of the office because of physical or mental disability, the chief assistant solicitor-general shall have the same powers, duties, and responsibilities as the solicitor-general. Said authority shall terminate upon the incumbent solicitor-general's resuming the duties of said office. Any question of fact concerning the disability of a solicitor-general shall be determined by the superior court sitting without a jury in the same manner and subject to the same procedures as is provided by Article V, Section IV of the Georgia Constitution for elected constitutional executive officers.

(2) If the solicitor-general shall be temporarily absent from the county such that he or she is not available to perform the duties of said office, the solicitor-general may authorize, in writing, the chief assistant solicitor-general to exercise any of the powers, duties, and responsibilities of the solicitor-general during such absence.

(3) If the solicitor-general shall be absent for a period of more than 30 days as a result of ordered military duty, as defined in Code Section 38-2-279, or as a result of a disability as provided in paragraph (1) of this subsection, the chief assistant solicitor-general shall be designated as the acting solicitor-general. If no chief assistant solicitor-general has been designated by the solicitor-general, the solicitor-general shall designate a chief assistant solicitor-general prior to entering ordered military duty. Should the solicitor-general fail to designate a chief assistant solicitor-general, the assistant solicitor-general senior in time of service shall be designated the acting solicitor-general. The designation of an acting solicitor-general shall terminate upon the solicitor-general's release from ordered military duty or upon the solicitor-general's resuming the duties of said office as provided in paragraph (1) of this subsection. If there are no assistant solicitors-general, a solicitor-general pro tempore shall be appointed as provided in Code Section 15-18-65. The designation shall terminate upon the solicitor-general's release from ordered military duty or upon the solicitor-general's resuming the duties of said office as provided in paragraph (1) of this subsection.

(4) An acting solicitor-general, upon assuming the office, shall be compensated at the same rate as is authorized by general or local law for the solicitor-general. The acting solicitor-general shall retain such other benefits and emoluments as an assistant solicitor-general, including, but not limited to, membership in any retirement system

which such assistant was a member of at the time of the appointment as acting solicitor-general.

(5) The acting solicitor-general shall be authorized to appoint an additional assistant solicitor-general who shall be compensated in the same manner and from the same source or sources as the acting solicitor-general was compensated prior to being designated acting solicitor-general. Said appointment shall terminate upon the solicitor-general's resuming the duties of the office. (Code 1981, § 15-18-70, enacted by Ga. L. 1996, p. 748, § 2.)

Cross references. — Confidential nature of recorded military service records, § 15-6-72.

15-18-70.1. Acting solicitor-general in the event of death or resignation.

(a) Upon the death or resignation of a solicitor-general, the chief assistant solicitor-general or, if there is no chief assistant solicitor-general, the assistant solicitor-general senior in time of service shall perform the duties of the deceased or resigned solicitor-general until such official's successor is appointed or elected and qualified. An assistant solicitor-general performing the duties of a deceased or resigned solicitor-general shall be compensated as provided for acting solicitors-general in subsection (b) of Code Section 15-18-70.

(b) If there is no assistant solicitor-general available to perform the duties of the deceased or resigned solicitor-general as provided in subsection (a) of this Code section, the presiding judge may request the assistance of the district attorney of the judicial circuit in which such county is located or another solicitor-general of a state court to prosecute cases until a solicitor-general is appointed or elected and qualified as provided by subsection (b) of Code Section 15-18-60. Any such district attorney or solicitor-general who is acting pursuant to this subsection shall be reimbursed by the county governing authority for actual expenses incurred while assisting in the state court pursuant to this subsection. (Code 1981, § 15-18-70.1, enacted by Ga. L. 2012, p. 53, § 3/SB 352; Ga. L. 2013, p. 141, § 15/HB 79.)

Effective date. — This Code section became effective April 11, 2012.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "solicitors-general" for "solicitor-generals" in the last sentence of subsection (a).

15-18-71. Additional personnel and employees.

(a) The solicitor-general of a state court may employ such additional assistant solicitors-general, or other attorneys, investigators, parapro-

fessionals, clerical assistants, victim and witness assistance personnel, and other employees or independent contractors as may be provided for by local law or as may be authorized by the governing authority of the county. The solicitor-general shall define the duties and fix the title of any attorney or other employee of the solicitor-general's office.

(b) Personnel employed by the solicitor-general pursuant to this Code section shall be compensated by the county, the manner and amount of compensation to be paid to be fixed either by the solicitor-general with the approval of the governing authority of the county or as provided for by local Act.

(c) All appointments of assistant solicitors-general and investigators pursuant to this Code section shall be in writing.

(d) All assistant solicitors-general and investigators shall, in addition to any oath prescribed by Chapter 3 of Title 45, take and subscribe to the following oath:

> "I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or affection discharge my duties as (assistant solicitor-general or investigator) of (here state the county) County.",

which shall be filed in accordance with Chapter 3 of Title 45. (Code 1981, § 15-18-71, enacted by Ga. L. 1996, p. 748, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma was added at the end of the first undesignated paragraph in subsection (d).

JUDICIAL DECISIONS

Termination of employee. — Employee who was hired by a county solicitor general under O.C.G.A. § 15-18-71 was not an employee of the county, and the solicitor general did not bring the employee into the county's civil service system under O.C.G.A. § 36-1-21(b). Therefore, the employee lacked a protected property interest in the job and could be terminated without cause and without a hearing. Thomas v. Lee, 286 Ga. 860, 691 S.E.2d 845 (2010).

15-18-72. Qualifications of personnel.

(a) Except as provided in Code Section 35-9-15, relating to cross designation of law enforcement officers and prosecuting attorneys, any assistant solicitor-general, or other attorney at law employed by the solicitor-general shall be a member in good standing of the State Bar of Georgia, admitted to practice before the appellate courts of this state, shall serve at the pleasure of the solicitor-general, and shall have such authority, powers, and duties as may be assigned by the solicitor-general.

(b) Any investigator employed by the solicitor-general's office who is authorized by the solicitor-general and by Article 4 of Chapter 11 of

Title 16, relating to firearms, to carry weapons or authorized by local law to exercise any of the powers of a peace officer of this state shall meet the requirements of Chapter 8 of Title 35 and shall serve at the pleasure of the solicitor-general.

(c) Subject to the provisions of Chapter 19 of Title 45, relating to employment practices of public officials and agencies, the solicitor-general shall, unless otherwise provided by local law, establish the qualifications of all other personnel employed in the solicitor-general's office. (Code 1981, § 15-18-72, enacted by Ga. L. 1996, p. 748, § 2.)

15-18-73. Offices, utilities, equipment, supplies, expenses, costs, materials.

(a) Except as provided in subsection (b) of this Code section, the governing authority of the county shall provide all offices, utilities, equipment, telephone expenses, legal costs, transcripts, materials, and supplies as may be necessary for the solicitor-general to perform the duties and obligations of such office in an orderly and efficient manner.

(b) The Prosecuting Attorneys' Council of the State of Georgia may, to the extent that funds or other resources are available to the council for such purpose, provide such additional equipment or services as may be requested by the solicitors-general. (Code 1981, § 15-18-73, enacted by Ga. L. 1996, p. 748, § 2.)

15-18-74. Liability; immunity from suit; liability insurance or contracts of indemnity.

(a) If a solicitor-general fails to carry out the duties of office as provided in subsection (a) of Code Section 15-18-66 without just cause, the solicitor-general shall be liable to rule as are attorneys at law.

(b) If a solicitor-general fails to attend court as required by law without just cause, the solicitor-general is liable to be fined $50.00 for each failure, to be retained out of the solicitor-general's salary.

(c) Solicitors-general of state courts and their staff shall be entitled to immunity from private suit for actions arising from the performance of their official duties to the same extent as district attorneys.

(d) The Prosecuting Attorneys' Council of the State of Georgia is authorized to purchase policies of liability insurance or contracts of indemnity or to participate in the state insurance and indemnification program established pursuant to Chapter 9 of Title 45 on behalf of the solicitors-general of the state courts and their staffs when engaged in the performance of their official duties. The council shall pay any

premiums out of such funds as may be available for the support of the district attorneys and solicitors-general of this state. (Code 1981, § 15-18-74, enacted by Ga. L. 1996, p. 748, § 2.)

ARTICLE 4

PRETRIAL INTERVENTION AND DIVERSION PROGRAM

Cross references. — Authorization to establish and administer pretrial intervention programs, § 34-2-14. Pretrial release and diversion programs, T. 42, C. 8, A. 5.

15-18-80. Policy and procedure.

(a) The prosecuting attorneys for each judicial circuit of this state shall be authorized to create and administer a Pretrial Intervention and Diversion Program. The prosecuting attorney for state courts, probate courts, magistrate courts, municipal courts, and any other court that hears cases involving a violation of the criminal laws of this state or ordinance violations shall also be authorized to create and administer a Pretrial Intervention and Diversion Program for offenses within the jurisdiction of such courts.

(b) It shall be the purpose of such a program to provide an alternative to prosecuting offenders in the criminal justice system.

(c) Entry into the program shall be at the discretion of the prosecuting attorney based upon written guidelines.

(d) The prosecuting attorney implementing said program shall create written guidelines for acceptance into and administration of the program. These guidelines shall include, but are not limited to, consideration of the following:

(1) The nature of the crime;

(2) The prior arrest record of the offender; and

(3) The notification and response of the victim.

(e) No prosecuting attorney shall accept any offender into the program for an offense for which the law provides a mandatory minimum sentence of incarceration or imprisonment that cannot be suspended, probated, or deferred.

(f) The prosecuting attorney shall be authorized to assess and collect from each offender who enters the program a fee not to exceed $1,000.00 for the administration of the program. Such fee may be waived in part or in whole or made payable in monthly increments upon a showing of good cause to the prosecuting attorney. Any fee collected under this subsection shall be made payable to the general fund of the political subdivision in which the case is being prosecuted.

(g) The prosecuting attorney shall be further authorized to collect restitution on behalf of victims. Any restitution collected under this subsection shall be made payable to and disbursed by the clerk of the court in which the case would be prosecuted.

(h) No program created pursuant to this Code section shall be construed as a violation of Code Section 15-13-35 or 15-18-26. (Code 1981, § 15-18-80, enacted by Ga. L. 2000, p. 1115, § 3; Ga. L. 2006, p. 420, § 1/HB 718; Ga. L. 2012, p. 899, § 2-3/HB 1176.)

Cross references. — Authorization to establish and administer pretrial intervention programs, § 34-2-14. Pretrial release and diversion programs, T. 42, C. 8, A. 5.

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

15-18-81. Court costs.

The prosecuting attorney may assess court costs against the defendant for the dismissal of criminal warrants when the affiant is not a peace officer. Any fee collected under this subsection shall be made payable to the general fund of the political subdivision in which the case is being prosecuted. (Code 1981, § 15-18-81, enacted by Ga. L. 2000, p. 1115, § 3; Ga. L. 2006, p. 420, § 2/HB 718.)

15-18-82. Definition.

As used in this article, the term "prosecuting attorney" means the individual responsible for prosecuting cases in superior courts, state courts, probate courts, magistrate courts, municipal courts, and any other court that hears cases involving a violation of the criminal laws of this state or ordinance violations. (Code 1981, § 15-18-82, enacted by Ga. L. 2006, p. 420, § 3/HB 718.)

ARTICLE 5

PROSECUTING ATTORNEYS OF MUNICIPAL COURTS

Effective date. — This article became effective April 11, 2012.

Cross references. — Prosecution by municipality of transactions in drug related objects, § 36-32-6.1.

15-18-90. Applicability of article.

The provisions of this article shall apply to a municipality authorized by the provisions of Article 1 of Chapter 32 of Title 36 to establish and maintain a municipal court, including a municipality for which a county is furnishing municipal court services pursuant to a contract authorized by Article 9 of Chapter 10 of this title. (Code 1981, § 15-18-90, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 130.

15-18-91. Creation of office of prosecuting attorney of municipal court; term; cooperative efforts.

(a) Subject to the provisions of this article, the governing authority of a municipality shall be authorized to create the office of prosecuting attorney of the municipal court. A copy of the resolution or ordinance creating the office of prosecuting attorney of the municipal court shall be provided to the Prosecuting Attorneys' Council of the State of Georgia.

(b) It shall be the duty of the municipal court clerk, or such other person designated by the governing authority of a municipality, to notify the Prosecuting Attorneys' Council of the State of Georgia of the name of any person appointed to be the prosecuting attorney of a municipal court within 30 days of such appointment.

(c) Unless otherwise provided by the charter of such municipality or other local law, the prosecuting attorney of the municipal court shall serve a term of office to be determined by the governing authority of such municipality.

(d) The governing authority of a municipality shall also be authorized to contract with the district attorney of the judicial circuit in which such municipality is located or the solicitor-general of the state court of the county in which such municipality is located for such officer to perform the duties of the prosecuting attorney in such municipal court. Any district attorney or solicitor-general entering into any such contract may assign such other members of his or her staff to prosecute in the municipal court. (Code 1981, § 15-18-91, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

15-18-92. Criteria for appointment; consent.

(a) Any person appointed as the prosecuting attorney of a municipal court shall be a member in good standing of the State Bar of Georgia and admitted to practice before the appellate courts of this state.

(b) Notwithstanding the provisions of subsection (a) of Code Section 15-18-21 or subsection (b) of Code Section 15-18-72, an assistant district attorney or assistant solicitor-general may be appointed as the prosecuting attorney of a municipal court with the prior written consent of the district attorney or solicitor-general who employs such assistant district attorney or assistant solicitor-general. Such consent may be withdrawn at any time by the employing district attorney or solicitor-general. Notice that consent for such appointment is being withdrawn shall be done in writing to the governing authority of such municipality not less than 30 days prior to the day that such assistant district attorney or assistant solicitor-general shall cease to serve as the prosecuting attorney of a municipal court. (Code 1981, § 15-18-92, enacted by Ga. L. 2012, p. 53, § 4/SB 352; Ga. L. 2013, p. 141, § 15/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "subsection (b) of Code Section 15-18-72" for "subsection (b) of 15-18-72" in the first sentence of subsection (b).

15-18-93. Oath of office.

In addition to the oaths prescribed by Chapter 3 of Title 45, relating to official oaths, the prosecuting attorney of a municipal court shall take and subscribe to the following oath: "I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or affection discharge my duties as prosecuting attorney of the (City) (Town) of (here state the municipality)." (Code 1981, § 15-18-93, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

15-18-94. Employment status; additional duties.

(a) Unless otherwise provided by local law, the governing authority of the municipality shall determine whether the prosecuting attorney of a municipal court shall be a full-time or part-time prosecuting attorney.

(b) Any full-time prosecuting attorney of a municipal court and any full-time employees of the prosecuting attorney of a municipal court shall not engage in the private practice of law.

(c) Any part-time prosecuting attorney of a municipal court and any part-time assistant prosecuting attorney of a municipal court may engage in the private practice of law, but shall not practice in the municipal court or appear in any matter in which that prosecuting attorney has exercised jurisdiction. (Code 1981, § 15-18-94, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

15-18-95. Disqualification or incapacity of prosecuting attorney; substitution.

If the prosecuting attorney of a municipal court is disqualified from engaging in the prosecution of a particular case or is unable to perform the duties of said office due to illness or incapacity, the governing authority shall provide for the appointment of a substitute prosecuting attorney. At any time in which a substitute prosecuting attorney is not available or an appointment has not been made, the city attorney of the applicable municipality may serve as the substitute prosecuting attorney until such time as a prosecuting attorney or substitute prosecuting attorney is available or appointed. (Code 1981, § 15-18-95, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

15-18-96. Authority of prosecuting attorney.

(a) The prosecuting attorney of a municipal court shall have the duty and authority to represent the municipality:

(1) In the municipal court:

(A) In the prosecution of any violation of the laws or ordinances of such municipality which is within the jurisdiction of such municipal court and punishable by confinement or a fine or both or by a civil penalty authorized by Code Section 40-6-163; and

(B) In the prosecution of any violation of state laws which by general law municipal courts have been granted jurisdiction to try and dispose of such offenses, specifically including those offenses described in Chapter 32 of Title 36 and Code Section 40-13-21;

(2) In the appeal of any case prosecuted in the municipal court to the superior court or the appellate courts of this state;

(3) In any case in which the defendant was convicted in the municipal court and is challenging such conviction through habeas corpus;

(4) To administer the oaths required by law to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the court as may be necessary; and

(5) To perform such other duties as are or may be required by law or ordinance or which necessarily appertain to such prosecuting attorney's office.

(b) The prosecuting attorney of a municipal court shall have the authority to:

(1) File, amend, and prosecute any citation, accusation, summons, or other form of charging instrument authorized by law for use in the municipal court;

(2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons filed in the municipal court as provided by law, except that the prosecuting attorney of a municipal court shall not have the authority to dismiss or enter a nolle prosequi in any case in which the accused is charged with a violation of state law other than one which the municipal court has jurisdiction to try and dispose of such offense without the consent of the proper prosecuting officer having jurisdiction to try and dispose of such offense. As used in this paragraph, the term "proper prosecuting officer" means, in the case of felonies, the district attorney and, in the case of misdemeanors, the solicitor-general in counties where there is a state court, or in counties where there is no solicitor-general, the district attorney;

(3) Reduce to judgment any fine, forfeiture, or restitution imposed by the municipal court as part of a sentence in an ordinance case or forfeiture of a recognizance which is not paid in accordance with the order of the court. A prosecuting attorney of a municipal court may institute such civil action in the courts of this state or of the United States or any of the several states to enforce such judgment against the property of the defendant; and

(4) Request and utilize the assistance of any other municipal prosecutor, solicitor-general, assistant solicitor-general, district attorney, assistant district attorney, or other attorney employed by an agency of this state or its political subdivisions or authorities in the prosecution of any criminal action.

(c) The provisions of this Code section shall not be deemed to restrict, limit, or diminish any authority or power of the district attorney or any solicitor-general to represent this state in any criminal case in which the accused is charged with a felony or misdemeanor, when the municipal court is acting as a court of inquiry pursuant to Article 2 of Chapter 7 of Title 17 or setting bail for any such offense, other than one which the municipal court has, by law, jurisdiction to try and dispose of. (Code 1981, § 15-18-96, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

15-18-97. Compensation for prosecuting attorney.

The prosecuting attorney of a municipal court shall be compensated by the municipality as provided by local law or, in the absence of such local law, as provided by the governing authority of such municipality. The prosecuting attorney of a municipal court shall be entitled to be reimbursed for actual expenses incurred in the performance of his or her official duties in the same manner and rate as other municipal employees. (Code 1981, § 15-18-97, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

15-18-98. Appointment of staff.

The prosecuting attorney of a municipal court may employ such additional assistant prosecuting attorneys and other employees or independent contractors as may be provided for by local law or as may be authorized by the governing authority of the municipality. The prosecuting attorney of a municipal court shall define the duties and fix the title of any attorney or other employee of the prosecuting attorney's office. Personnel employed pursuant to this Code section shall be compensated by the municipality. (Code 1981, § 15-18-98, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

15-18-99. Qualifications of prosecutors.

Any assistant prosecuting attorney or other attorney at law employed by the municipality for the purposes of prosecuting in the municipal court shall be a member in good standing of the State Bar of Georgia or satisfy the provisions of Code Section 15-18-22. (Code 1981, § 15-18-99, enacted by Ga. L. 2012, p. 53, § 4/SB 352.)

CHAPTER 19

ATTORNEYS

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Setting the Fee, 1 Am. Jur. Trials 93.

Processing the Case, 1 Am. Jur. Trials 189.

Managing the Heavy Case Load — Staff

Assignments, 1 Am. Jur. Trials 275.

Interference with Attorney's Contingent Fee Contract, 13 Am. Jur. Trials 153.

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Avoiding Legal Malpractice Claims in Litigation, 46 Am. Jur. Trials 325.

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Attorney's right to appear pro hac vice in state court, 20 ALR4th 855.

Liability of attorney for improper or ineffective incorporation of client, 40 ALR4th 535.

Assignability of claim for legal malpractice, 40 ALR4th 684.

Liability of attorney for suicide of client based on attorney's professional act or omission, 41 ALR4th 351.

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Propriety of attorney's resignation from bar in light of pending or potential disciplinary action, 54 ALR4th 264.

Attorney's liability under state law for opposing party's counsel fees, 56 ALR4th 486.

What constitutes negligence sufficient to render attorney liable to person other than immediate client, 61 ALR4th 464.

Attorney's liability, to one other than immediate client, for negligence in connection with legal duties, 61 ALR4th 615.

Attorney's misrepresentation to court of his state of health or other personal matter in seeking trial delay as ground for disciplinary action, 61 ALR4th 1216.

Attorneys: revocation of state court pro hac vice admission, 64 ALR4th 1217.

Attorney's personal liability for expenses incurred in relation to services for client, 66 ALR4th 256.

What items of client's property or funds are not subject to lien, 70 ALR4th 827.

Cost of services provided by paralegals or the like as compensable element of award in state court, 73 ALR4th 938.

Attorney's argument as to evidence previously ruled inadmissible as contempt, 82 ALR4th 886.

Measure and elements of damages recoverable for attorney's negligence in preparing or conducting litigation — twentieth century cases, 90 ALR4th 1033.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Arguments by attorneys in civil cases, § 9-10-180 et seq. Professional corporations generally, § 14-7-1 et seq. Arguments by attorneys in criminal cases, § 17-8-70 et seq. Prepaid legal services plans, § 33-35-1 et seq.

Appointment of trial counsel and defense counsel to serve at general and special courts-martial, § 38-2-395. Duties of trial and defense counsel in general or special court-martial, § 38-2-432. Attorneys practicing in probate court, Uniform Rules for the Probate Courts, Rule 3.3.

Law reviews. — For article, "Georgia Lawyers Report Gender and Racial Bias in Legal Practice: A Review of the Georgia Bar's Survey," see 28 Ga. St. B.J. 6 (1991). For article, "Black Lawyers of Georgia: in Pursuit of Justice," see 28 Ga. St. B.J. 25 (1991). For article, "Technology and the Third Millennium Lawyer," see 28 Ga. St. B.J. 56 (1991). For article, "What It Means to Be a Good Lawyer," see 7 Ga. St. U.L. Rev. 411 (1991).

For note, "An Attorney's Liability for Professional Negligence in Georgia," see 3 Ga. St. B.J. 210 (1966).

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Privilege of communication to attorney by client in attempt to establish false claim, 9 ALR 1081.

Amount or basis of recovery by attorney who takes case on contingent fee, where client discontinues, settles, or compromises, 40 ALR 1529.

Propriety and effect of attorney representing interest adverse to that of former client, 51 ALR 1307; 52 ALR2d 1243.

Right of attorney to have case continued to protect his compensation, 67 ALR 442.

Necessity of order of substitution where new attorney is employed to prosecute an appeal, 70 ALR 834.

Validity and effect of agreement between attorney and layman to divide attorney's fees or compensation for business of third person, 86 ALR 195.

Undue influence in nontestamentary gift from client to attorney, 24 ALR2d 1288.

Liability of attorney for loss of client's money or personal property in his possession or entrusted to him, 26 ALR2d 1340.

Propriety and effect of representation of heir or other beneficiary of decedent's estate by attorney for executor or administrator in controversy with other heirs or beneficiaries, 47 ALR2d 1104.

Constitutionality and construction of statute against public attorney representing private person in civil action, 82 ALR2d 774.

Liability in tort for interference with attorney-client or physician-patient relationship, 26 ALR3d 679.

Propriety and prejudicial effect of counsel's representing defendant in criminal case notwithstanding counsel's representation or former representation of prosecution witness, 27 ALR3d 1431.

Representation of conflicting interests as disqualifying attorney from acting in a civil case, 31 ALR3d 715.

Propriety of attorney who has represented corporation acting for corporation in controversy with officer, director, or stockholder, 1 ALR4th 1124.

Rights of attorneys leaving firm with respect to firm clients, 1 ALR4th 1164.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

Communication with party represented by counsel as ground for disciplining attorney, 26 ALR4th 102.

Validity and enforceability of referral fee agreement between attorneys, 28 ALR4th 665.

Authority of trial judge to impose costs or other sanctions against attorney who fails to appear at, or proceed with, scheduled trial, 29 ALR4th 160.

Falsehoods, misrepresentations, impersonations, and other irresponsible conduct as bearing on requisite good moral character for admission to bar, 30 ALR4th 1020.

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Liability for interference with physician-patient relationship, 87 ALR4th 845.

Liability in tort for interference with attorney-client relationship, 90 ALR4th 621.

Validity and construction of agreement between attorney and client to arbitrate disputes arising between them, 26 ALR5th 107.

15-19-1. Scope of admission to practice.

Those who are admitted to practice in the superior courts may practice in any court of this state other than the Supreme Court and the Court of Appeals, for each of which another and special license shall be obtained. (Orig. Code 1863, § 362; Code 1868, § 423; Code 1873, § 388; Code 1882, § 388; Civil Code 1895, § 4397; Civil Code 1910, § 4931; Code 1933, § 9-102.)

Cross references. — Litigation costs and attorney's fees assessed for frivolous actions and defenses, § 9-15-14. Admission to appear before Supreme Court, Rules of the Supreme Court of the State of Georgia, Rule 4.

JUDICIAL DECISIONS

Legislative intent. — Legislature in passing this section was not dealing with the formulation of a definition of what then constituted the practice of law in this state; the purpose of this section is simply to define who may practice law in the various courts of this state. Boykin v. Hopkins, 174 Ga. 511, 162 S.E. 796 (1932).

Trust company may prepare papers relating to conveyance of property. — In light of the history of the legislation on the subject, the restrictions upon the right to practice law refer to practice in the courts, and do not prohibit a private corporation, organized under the laws of this state and exercising as a business the general powers of a trust company by examining, certifying, and guaranteeing titles to real estate under authority conferred by its charter, from exercising a further charter power "to prepare any and all papers in connection with conveyance of real and/or personal property that it may be requested to prepare by a customer." Atlanta Title & Trust Co. v. Boykin, 172 Ga. 437, 157 S.E. 455 (1931).

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C.J.S. — 7 C.J.S., Attorney and Client, § 3.

15-19-2. Rules governing board of examiners; amount and disposition of examination fees.

(a) It shall be the duty of the Justices of the Supreme Court to appoint and fix the number, terms, and compensation of the Board of Bar Examiners, whose powers and duties shall be as set forth by the Supreme Court by rule. All salaries, fees, and other expenses incurred in administering the Board of Bar Examiners and the examinations conducted by the board shall be paid by the Supreme Court.

(b) The Supreme Court, upon recommendation by the board, shall by rule set the amount of the examination fee to be paid by the applicants for admission to the bar by examination and shall direct to whom and when the fee shall be paid. The examination fee shall be reasonable and shall be determined in such a manner that the total amount of the fees charged and collected by the board in each fiscal year shall approximate the direct and indirect costs of administering the examination. (Ga. L. 1897, p. 85, §§ 1-5; Ga. L. 1898, p. 83, § 1; Civil Code 1910, § 4936; Code 1933, § 9-105; Ga. L. 1952, p. 262, § 1; Ga. L. 1971, p. 763, § 1; Ga. L. 1979, p. 502, § 1; Ga. L. 1985, p. 149, § 15; Ga. L. 2009, p. 644, § 2/HB 283.)

Law reviews. — For article discussing Georgia system of admission to the bar by examination prior to revision and repeal of certain provisions in 1971, see 6 Mercer L. Rev. 216 (1955).

For comment on Rogers v. Medical Ass'n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

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State Board of Bar Examiners is not quasi-judicial board whose action may be reviewed by writ of certiorari. Ex parte Ross, 196 Ga. 499, 26 S.E.2d 880 (1943).

Cited in Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718 (1969); McMichen v. State Bd. of Bar Exmrs., 305 F. Supp. 1221 (N.D. Ga. 1969).

RESEARCH REFERENCES

C.J.S. — 7 C.J.S., Attorney and Client, § 12.

ALR. — Power of legislation respecting admission to bar, 144 ALR 150.

Sexual conduct or orientation as ground for denial of admission to bar, 105 ALR5th 217.

Criminal record as affecting applicant's moral character for purposes of admission to the bar, 3 ALR6th 49.

15-19-3. Rules governing examinations; time and place thereof.

(a) The Justices of the Supreme Court shall be authorized to make and adopt rules as to the making of application to take an examination and as to the time, manner, and places of holding examinations for admission to the bar of this state and are specifically authorized to provide for the holding of the examinations under the supervision of the Board of Bar Examiners at not more than three cities, under such rules and regulations as may be prescribed by them. They may provide for the examination to be held over such period of days as in their judgment shall be fair to the applicant for examination. There shall be held not less than two examinations during each calendar year, the date or dates of which shall be fixed by the Justices of the Supreme Court.

(b) Nothing in this Code section shall be construed as limiting applicants for admission to the bar to college trained persons, except as provided by law. (Ga. L. 1945, p. 151, § 1; Ga. L. 1957, p. 624, § 1; Ga. L. 1963, p. 293, § 1; Ga. L. 1966, p. 274, § 3; Ga. L. 1990, p. 8, § 15.)

Law reviews. — For article discussing Georgia system of admission to the bar by examination prior to revision and repeal of certain provisions in 1971, see 6 Mercer L. Rev. 216 (1955).

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Classifying applicants as either passing or failing the state bar examination is rational and furthers a legitimate state goal. Pace v. Smith, 248 Ga. 728, 286 S.E.2d 18 (1982).

Cited in McMichen v. State Bd. of Bar Exmrs., 305 F. Supp. 1221 (N.D. Ga. 1969).

RESEARCH REFERENCES

C.J.S. — 7 C.J.S., Attorney and Client, § 6.

ALR. — Criminal record as affecting applicant's moral character for purposes of admission to the bar, 3 ALR6th 49.

15-19-4. Duties of attorneys.

It is the duty of attorneys at law:

(1) To maintain the respect due to courts of justice and judicial officers;

(2) To employ, for the purpose of maintaining the causes confided to them, such means only as are consistent with truth and never to seek to mislead the judges or juries by any artifice or false statement of the law;

(3) To maintain inviolate the confidence and, at every peril to themselves, to preserve the secrets of their clients;

(4) To abstain from all offensive personalities and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which they are charged;

(5) To encourage neither the commencement nor the continuance of an action or proceeding from any motives of passion or interest; and

(6) Never to reject, for a consideration personal to themselves, the cause of the defenseless or oppressed. (Orig. Code 1863, § 391; Code 1868, § 452; Code 1873, § 417; Code 1882, § 417; Civil Code 1895, § 4427; Civil Code 1910, § 4965; Code 1933, § 9-601.)

Cross references. — Establishment of attorney-client privilege, § 24-5-501.

Editor's notes. — In light of the inherent power of the judiciary to regulate the bar, this section is directory only. See Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718 (1969) and Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969). See also the Code of Professional Responsibility in the Rules and Regulations for Organization and Government of the State Bar of Georgia.

Administrative rules and regulations. — Appearance by attorneys; signing of pleadings, Official Compilation of the Rules and Regulations of the State of Georgia, Office of State Administrative Hearings, Administrative Rules of Procedure, Rule 616-1-2-.34.

Law reviews. — For article, "Legal Ethics and the Lawyer's Duty of Loyalty," see 29 Emory L.J. 909 (1981).

For note, "Conflicts of Interest in the Liability Insurance Setting," 13 Ga. L. Rev. 973 (1979).

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Legislature did not intend to create a private cause of action. — Tingle v. Arnold, Cate & Allen, 129 Ga. App. 134, 199 S.E.2d 260 (1973).

Purpose of section. — Purpose of this section is to provide ethical guidelines for attorneys in their capacity as officers of the court, violation of which is within the inherent power of the courts to handle through contempt proceedings. Tingle v. Arnold, Cate & Allen, 129 Ga. App. 134, 199 S.E.2d 260 (1973).

Applicability of section to competency of attorney as witness. — Former Code 1933, §§ 9-501, 38-418, and 38-1605 (see now O.C.G.A. §§ 15-19-4, former 24-9-21, and former 24-9-25 [see now O.C.G.A. § 24-5-501]) have no application to competency of attorney as witness with respect to essential facts attending the execution of a will. Manley v. Combs, 197 Ga. 768, 30 S.E.2d 485 (1944).

Attorney at law may testify as a witness with respect to essential facts attending the execution of a will. Manley v. Combs, 197 Ga. 768, 30 S.E.2d 485 (1944).

Patently false statement by an attorney in a pleading. — Counsel's statement in a legal malpractice complaint that an expert affidavit that was required to be filed with the complaint was not obtainable due to time constraints as the limitations period was about to expire was patently false and a sham pleading and violated counsel's duty as an attorney to employ only such means as were consistent with the truth when the complaint had twice previously been filed and voluntarily dismissed for failure to include the affidavit. Smith v. Morris, Manning & Martin, LLP, 254 Ga. App. 355, 562 S.E.2d 725 (2002).

Exercise of exemplary fiducial conduct by attorneys. — Attorneys are expected to exercise exemplary fiducial conduct on behalf of their clients and toward the courts. McCoy v. McSorley, 119 Ga. App. 603, 168 S.E.2d 202 (1969).

Lawyer's refusal of case given by judge. — Lawyer, except in unusual circumstances, has no right and will make no effort to refuse a case which the lawyer is requested to take by a judge of the court before whom the lawyer regularly appears, and such request is tantamount to a demand. Weiner v. Fulton County, 113 Ga. App. 343, 148 S.E.2d 143, cert. denied, 385 U.S. 958, 87 S. Ct. 393, 17 L. Ed. 2d 304 (1966).

Lawyer's duty never to reject cause of defenseless. — Lawyers undertake certain professional obligations over and above those demanded in some of the other professions, among the obligations being never to reject, for a consideration personal to themselves, the cause of the defenseless. Weiner v. Fulton County, 113 Ga. App. 343, 148 S.E.2d 143, cert. denied, 385 U.S. 958, 87 S. Ct. 393, 17 L. Ed. 2d 304 (1966).

Attorney's services and work product not constitutionally compensable. — Request by a judge of a trial court that an attorney represent an indigent defendant in a criminal case is tantamount to a demand with which the attorney must necessarily comply, but the attorney's professional services, work

product, and necessary out-of-pocket expenses in providing competent representation are not required by the Constitution to be compensated. Weiner v. Fulton County, 113 Ga. App. 343, 148 S.E.2d 143, cert. denied, 385 U.S. 958, 87 S. Ct. 393, 17 L. Ed. 2d 304 (1966).

Provision of counsel to indigents. — While former Ga. L. 1968, p. 999, § 1 et seq. (see now the Georgia Public Defender Standards Council, O.C.G.A. § 17-12-1 et seq.) should provide effective means of affording counsel to indigent defendants, it was not the exclusive method for accomplishing that end. Perry v. State, 120 Ga. App. 304, 170 S.E.2d 350 (1969).

Defense counsel's statement foreclosing defense was not improper. — Defense counsel in murder trial gave away no right of counsel's client, nor did any injury to defendant's cause, in frankly stating to the court that counsel did not take the position that the defense of justifiable homicide was involved. Anderson v. State, 196 Ga. 468, 26 S.E.2d 755 (1943).

Prejudice not shown if knowledge could be imputed to plaintiff. — If a party in a divorce action, who was an attorney, was fully aware of a fiduciary agreement which covered certificates of deposit identified as assets in the divorce action, and failed to show any damages resulting from the disclosure to her husband's attorney of the fact that her new counsel had requested delivery of the proceeds of those certificates to him, summary judgment was properly awarded against her. Cagle v. Davis, 236 Ga. App. 657, 513 S.E.2d 16 (1999).

Out-of-state order prohibiting unprivileged testimony. — Michigan order, by facially prohibiting former corporate litigation consultant from testifying as to matters outside the scope of any privilege, violated Georgia public policy; therefore, the full faith and credit clause did not require the federal district court in Georgia to give full effect to the Michigan court order. Williams v. GMC, 147 F.R.D. 270 (S.D. Ga. 1993).

Cited in Elam v. Johnson, 48 Ga. 348 (1873); Kennedy v. Redwine, 59 Ga. 327 (1877); Parker v. Wellons, 43 Ga. App. 721, 160 S.E. 109 (1931); McRae v. Boykin, 50 Ga. App. 866, 179 S.E. 535 (1935); United States v. Romano, 482 F.2d 1183 (5th Cir. 1973); Roan v. Cranston, 173 Ga. App. 747, 327 S.E.2d 856 (1985); Lucas v. Bob Hurst Mazda-Peugeot Autos., 174 Ga. App. 212, 329 S.E.2d 593 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, §§ 3 et seq., 139.

C.J.S. — 7 C.J.S., Attorney and Client, § 4. 7A C.J.S., Attorney and Client, § 234 et seq.

ALR. — Agreement for contingent fee as assignment of interest in judgment, 2 ALR 454; 19 ALR 399.

Privilege of communication to attorney as affected by termination of employment, 5 ALR 728.

Privilege of communication to attorney by client in attempt to establish false claim, 5 ALR 977; 9 ALR 1081.

Agreement or understanding between attorney and client to use money for unlawful purposes as affecting their rights inter se, 26 ALR 98.

Aspersing character or reputation of litigant as ground for disbarment of attorney, 41 ALR 494.

Propriety and effect of attorney representing interest adverse to that of former client, 51 ALR 1307; 52 ALR2d 1243.

Attorney's liability for failure to follow client's instructions, 56 ALR 962.

Refusal of attorney to disclose identity of, whereabouts of, or other information relating to, his client as contempt, 101 ALR 470.

Attorney's comment on opposing party's refusal to permit introduction of, or to offer, privileged testimony, or to permit privileged witness to testify, 116 ALR 1170.

Duty of attorney to advise client regarding the work involved and the amount of his compensation, 117 ALR 1008.

Attorney-client privilege as affected by wrongful or criminal character of contemplated acts or course of conduct, 125 ALR 508.

Campaign or concerted action in interest of public by bar association or other

group against usurious or illegal practices, or for the investigation of business or other activities with which such practices may be associated, 132 ALR 1177.

Attorney's representation of parties adversely interested as affecting judgment or estoppel in respect thereof, 154 ALR 501.

Duties, rights, and remedies between attorney and client where attorney purchases property of client at or through tax, execution, or judicial sale, 20 ALR2d 1280.

Liability of attorney for loss of client's money or personal property in his possession or entrusted to him, 26 ALR2d 1340.

Waiver of attorney-client privilege by personal representative or heir of deceased client or by guardian of incompetent, 67 ALR2d 1268.

Right of attorney to continue divorce or separation suit against wishes of his client, 92 ALR2d 1009.

Attorney's criticism of judicial acts as ground of disciplinary action, 12 ALR3d 1408.

What constitutes representation of conflicting interests subjecting attorney to disciplinary action, 17 ALR3d 835.

Right of attorney appointed by court for indigent accused to, and court's power to award, compensation by public, in absence of statute or court rule, 21 ALR3d 819.

Fabrication or suppression of evidence as ground of disciplinary action against attorney, 40 ALR3d 169.

Attorney's liability for malpractice in connection with defense of criminal case, 53 ALR3d 731.

Rights and duties of attorney in a criminal prosecution where client informs him of intention to present perjured testimony, 64 ALR3d 385.

Attorney's liability for negligence in cases involving domestic relations, 78 ALR3d 255.

Medical malpractice countersuits, 84 ALR3d 555.

Right of clergyman appearing in court as professional attorney to be in clerical garb, 84 ALR3d 1143.

Legal malpractice in settling or failing to settle client's case, 87 ALR3d 168.

Propriety and prejudicial effect of prosecutor's argument to jury indicating his belief or knowledge as to guilt of accused — modern state cases, 88 ALR3d 449.

Method employed in collecting debt due client as ground for disciplinary action against attorney, 93 ALR3d 880.

Civil liability of attorney for abuse of process, 97 ALR3d 688.

Attorney's conviction in foreign or federal jurisdiction as ground for disciplinary action, 98 ALR3d 357.

Failure to pay creditors as affecting applicant's moral character for purposes of admission to the bar, 4 ALR4th 436.

Applicability of attorney-client privilege to evidence or testimony in subsequent action between parties originally represented contemporaneously by same attorney, with reference to communication to or from one party, 4 ALR4th 765.

Right of party litigant to defend or counterclaim on ground that opposing party or his attorney is engaged in unauthorized practice of law, 7 ALR4th 1146.

Attorney's failure to attend court, or tardiness, as contempt, 13 ALR4th 122.

Attorney's fees: obduracy as basis for state-court award, 49 ALR4th 825.

Legal malpractice liability for advising client to commit crime or unlawful act, 51 ALR4th 1227.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving formation or dissolution of business organization as ground for disciplinary action — modern cases, 63 ALR4th 656.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving real-estate transactions as ground for disciplinary action — modern cases, 65 ALR4th 24.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in tax matters as ground for disciplinary action — modern cases, 66 ALR4th 314.

Negligence, inattention, or professional incompetence of attorney in handling of client's affairs in estate or probate matters as ground for disciplinary action — modern cases, 66 ALR4th 342.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in family law matters as

ground for disciplinary action—modern cases, 67 ALR4th 415.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in personal injury or property damage actions as ground for disciplinary action — modern cases, 68 ALR4th 694.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in criminal matters as ground for disciplinary action — modern cases, 69 ALR4th 410.

Attorney's assertion of retaining lien as violation of ethical code or rules governing professional conduct, 69 ALR4th 974.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in bankruptcy matters as ground for disciplinary action — modern cases, 70 ALR4th 786.

Legal malpractice in handling or defending medical malpractice claim, 78 ALR4th 725.

Legal malpractice in defense of criminal prosecution, 4 ALR5th 273.

Criminal liability of attorney for tampering with evidence, 49 ALR5th 619.

Engaging in offensive personality as ground for disciplinary action against attorney, 58 ALR5th 429.

15-19-5. Authority of attorney to bind client.

Attorneys have authority to bind their clients in any action or proceeding by any agreement in relation to the cause, made in writing, and by signing judgments, entering appeals, and entering such matters, when permissible, on the dockets of the court. Attorneys who are otherwise authorized by law to take affidavits and administer oaths shall not be disqualified to take affidavits required of their clients in any matter or proceeding of any nature whatsoever. (Orig. Code 1863, § 382; Code 1868, § 443; Code 1873, § 408; Code 1882, § 408; Civil Code 1895, § 4417; Civil Code 1910, § 4955; Code 1933, § 9-605; Ga. L. 1957, p. 495, § 1.)

Law reviews. — For article surveying the law in Georgia on admissions, see 8 Mercer L. Rev. 252 (1957). For survey article on legal ethics, see 34 Mercer L. Rev. 197 (1982). For article on the law concerning settlements negotiated by attorneys, see 29 Ga. St. B.J. 10 (1992). For article on the law concerning settlements negotiated by attorneys, see 29 Ga. St. B.J. 10 (1992).

JUDICIAL DECISIONS

Analysis

General Consideration
Oral and Written Agreements
Limitations on Attorney's Authority
Discharge of Attorney or Parties
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Practice and Procedure

General Consideration

Code section is codification of existing rule. — This section did not originate from legislative enactment, but was a codification of the rule previously existing and arising from the decisions of courts. Evans v. Brooke, 182 Ga. 197, 184 S.E. 800 (1936).

This section does not confer upon attorneys any new authority, but states preexisting general rule derived from the sources to which the codifiers were autho-

rized to look. Evans v. Brooke, 182 Ga. 197, 184 S.E. 800 (1936).

Estoppel. — This section is subject to the doctrine of estoppel. General Communications Serv., Inc. v. Georgia Pub. Serv. Comm'n, 244 Ga. 855, 262 S.E.2d 96 (1979).

Attorney's authority is plenary absent express restrictions. — Absent express restrictions upon attorney's authority, it may be termed plenary insofar as the court and the opposing parties are concerned. Davis v. Davis, 245 Ga. 233, 264 S.E.2d 177 (1980); Glazer v. J.C. Bradford & Co., 616 F.2d 167 (5th Cir. 1980).

Attorney as party's agent. — Attorney of record is party's agent in prosecution of legal action, and the attorney's authority is determined by the terms of the attorney's contract of employment and the instructions given by the attorney's client. Davis v. Davis, 245 Ga. 233, 264 S.E.2d 177 (1980); Glazer v. J.C. Bradford & Co., 616 F.2d 167 (5th Cir. 1980).

Whatever counsel assents to, client assents to. — If party comes into court competent to select counsel and does select counsel, the counsel is there for the purpose of representing the client, and whatever the counsel assents to, the client assents to; there is full power on the part of the counsel to represent the client, and it is just the same as if the client were there in person. Abney v. State, 47 Ga. App. 40, 169 S.E. 539 (1933).

Client bound by counsel's agreement. — If plaintiff's attorney wrote a letter to defendant's liability insurance carrier stating that certain entities would not be sued in consideration of the carrier's making an investigator available for interview and the plaintiffs received the benefits of the agreement by interviewing the investigator, plaintiffs were estopped from denying the authority of the attorney to make the agreement. White v. Orr Leasing, Inc., 210 Ga. App. 599, 436 S.E.2d 693 (1993).

Counsel's agreement to dismiss case without client's knowledge. — Agreement by and consent of counsel of record to dismiss a pending case is binding upon the client even though the client may not have known of the attorney's consent or agreement and did not assent thereto. Wilson v. N.E. Isaacson of Ga., Inc., 139 Ga. App. 582, 229 S.E.2d 29 (1976).

Settlement agreed on prior to trial enforced by court. — If, while still appearing as attorney of record for plaintiff, attorney by letter authorizes or directs the clerk of the court in which an action is pending to dismiss the case upon payment of costs by the defendants therein, and the case is dismissed pursuant to such letter, plaintiff, in the absence of any fraud or any showing that the court, the clerk, or the opposite parties or their attorneys were cognizant of the attorney's discharge or withdrawal, is bound by the act of the attorney in dismissing the case, and cannot thereafter have plaintiff's case reinstated on the ground that the dismissal was unauthorized. Corbin v. Goepper, 184 Ga. 559, 192 S.E. 24 (1937); Wilson v. N.E. Isaacson of Ga., Inc., 139 Ga. App. 582, 229 S.E.2d 29 (1976).

If the record reveals that counsel in fact negotiated and agreed on a compromise prior to trial, such settlement agreement once entered into cannot be repudiated by either party and will be summarily enforced by the court. Calhoun v. Cook, 362 F. Supp. 1249 (N.D. Ga. 1973), aff'd, 522 F.2d 717 (5th Cir. 1975).

Enforcement of settlement not determinative of rules violation. — Although a third party may enforce a settlement agreement that an attorney made without proper authority, that enforcement does not determine whether the attorney has violated the disciplinary rules of the State Bar. In re Lewis, 266 Ga. 61, 463 S.E.2d 862 (1995).

Enforcement of settlement agreement between two versions. — Trial court did not err by enforcing a settlement agreement because two written versions of an agreement negotiated by counsel were signed by the mortgagor and both documents contained the main disputed term, namely the modification of the security deed on the Georgia home, and both documents provided that the parties would execute all documents necessary to resolve the matter and cooperate to effectuate the settlement in a timely manner. Tillman v. Vinings Bank, 324 Ga. App. 469, 751 S.E.2d 117 (2013).

General Consideration (Cont'd)

Attorney compromising client's defense. — Attorney may not compromise the client's claim or defense unless the compromise is specially authorized in writing or ratified, or unless the doctrine of estoppel, or some other special equity intervenes. Equitable Gen. Ins. Co. v. Johnson, 166 Ga. App. 215, 303 S.E.2d 757 (1983).

Cited in Lovelace v. Lovelace, 179 Ga. 822, 177 S.E. 685 (1934); Cook v. Wier, 185 Ga. 418, 195 S.E. 740 (1938); Galfas v. Ailor, 81 Ga. App. 13, 57 S.E.2d 834 (1950); Manis v. Genest, 210 Ga. 16, 77 S.E.2d 525 (1953); Hatcher v. Georgia Farm Bureau Mut. Ins. Co., 112 Ga. App. 711, 146 S.E.2d 535 (1965); M & M Mars v. Jones, 129 Ga. App. 389, 199 S.E.2d 617 (1973); Ampex Credit Corp. v. Bateman, 554 F.2d 750 (5th Cir. 1977); Johnson v. State, 152 Ga. App. 624, 263 S.E.2d 509 (1979); Lennon v. Aeck Assocs., 157 Ga. App. 294, 277 S.E.2d 289 (1981); White v. Owens, 172 Ga. App. 373, 323 S.E.2d 167 (1984); Nix v. Crews, 200 Ga. App. 58, 406 S.E.2d 566 (1991); Bell v. Bell, 247 Ga. App. 462, 543 S.E.2d 455 (2000).

Oral and Written Agreements

Settlement agreements required to be in writing. — Settlement agreements between attorneys must be in writing in order to be binding. Westwood Place, Ltd. v. Green, 153 Ga. App. 595, 266 S.E.2d 242, aff'd in part, rev'd in part, sub nom. Leventhal v. Green, 246 Ga. 287, 271 S.E.2d 194 (1980).

Agreement between counsel on behalf of their clients must be in writing in order to be enforceable if the very existence of the agreement is disputed. LeCroy v. Massey, 185 Ga. App. 828, 366 S.E.2d 215 (1988).

Oral agreement was not enforceable because "the existence of the agreement" was disputed. Abrams v. Abrams, 262 Ga. 170, 416 S.E.2d 88 (1992).

Exceptions to writing requirement. — Agreements by counsel to be binding upon their clients must be in writing, except if such agreements are made in open court, or if one party is misled by fraudulent misrepresentations of the other. Davenport v. Davenport, 218 Ga. 475, 128 S.E.2d 772 (1962).

There is no law or rule which requires agreements between counsel, when made in open court, to be in writing. Wilson v. State, 145 Ga. App. 315, 244 S.E.2d 355 (1978).

Although ordinarily a settlement agreement must be reduced to writing, if there is no dispute as to either the existence or terms of settlement, then the client will be bound by the agreement's terms even in the absence of a writing. Clark v. City of Zebulon, 156 F.R.D. 684 (N.D. Ga. 1993).

Enforceable oral agreements. — Oral settlements or agreements between counsel, acting with apparent authority, have been consistently enforced if the agreement has been at least partially performed to the detriment of the party seeking to enforce the agreement. General Communications Serv., Inc. v. Georgia Pub. Serv. Comm'n, 149 Ga. App. 466, 254 S.E.2d 710, aff'd, 244 Ga. 855, 262 S.E.2d 96 (1979).

Section allows attorneys for parties involved in litigation to reach enforceable agreements terminating the litigation, and such settlement agreements reached by and between counsel for the litigants are binding on the clients even if the agreement is oral; such an agreement is binding only if it is clear that the agreement is full and complete, covers all issues, and is understood by all litigants concerned. Providers Benefit Life Ins. Co. v. Tidewater Group, Inc., 8 Bankr. 930 (Bankr. N.D. Ga. 1981).

If the attorneys of a propounder of a will and caveators did not dispute the existence or terms of a settlement agreement, the trial court correctly concluded that the oral settlement agreement as made between the attorneys and memorialized by a typed document rendered the propounder's alleged lack of consent irrelevant to the existence and terms of any such agreement. Tidwell v. White, 220 Ga. App. 415, 469 S.E.2d 258 (1996).

Attorneys writings may show agreement. — In determining the existence or terms of a disputed settlement agreement in the absence of a formal writing signed by the parties, letters or documents prepared by attorneys which

memorialize the terms of the agreement will suffice. In re Hopson, 216 Bankr. 297 (Bankr. N.D. Ga. 1997).

Limitations on Attorney's Authority

Agreement binding on client unless client prohibited agreement. — Alleged agreement of counsel was binding upon the defendant since it did not appear that the defendant restricted the authority of the attorney by prohibiting the making of such an agreement. Reece v. McCormack, 188 Ga. 665, 4 S.E.2d 575 (1939).

Opposing party aware of limitations on attorney's authority. — Attorney is without authority to compromise client's case if adverse party or that party's attorney knows that the opponent is not consenting to such disposition of the case as the case is the property of the client, not that of counsel; it is a compromise if there be a surrender of any right which the client has invoked in the client's pleadings to the court. Evans v. Brooke, 182 Ga. 197, 184 S.E. 800 (1936).

Opposing party unaware of limitations on attorney's authority. — Client is bound by the attorney's agreement to settle action, even though attorney may not have had express authority to settle, if the opposing party was unaware of any limitation on the attorney's apparent authority. Glazer v. J.C. Bradford & Co., 616 F.2d 167 (5th Cir. 1980).

If the dispute as to an agreement is not between opposing parties but is, rather, between the attorney and the client, and there is no challenge to the existence or the terms of an agreement but only to an attorney's authority to enter into an agreement, and if the opposite party is ignorant of any limitation upon the attorney's authority, the client will be bound by the attorney's actions, even in the absence of a writing or detrimental reliance by the opposing party. Brumbelow v. Northern Propane Gas Co., 251 Ga. 674, 308 S.E.2d 544 (1983); Tranakos v. Miller, 220 Ga. App. 829, 470 S.E.2d 440 (1996).

Attorney had no apparent authority to bind employer in mediation settlement. — Trial court erred in denying a former employer's motion for summary judgment in a former employee's action to enforce a mediation settlement because the employer's attorney did not have apparent authority to bind the employer to the settlement agreement since the settlement agreement expressly provided for the signature of the employer's president, who refused to sign the agreement; the evidence did not show that the president either intended to make the employee believe that the attorney was authorized to act for the president or realized that the president's conduct was likely to create such belief. OMNI Builders Risk, Inc. v. Bennett, 313 Ga. App. 358, 721 S.E.2d 563 (2011).

Discharge of Attorney or Parties

Client bound by acts of attorney unless discharge reordered. — If attorney at law had actually appeared in court on behalf of a client and had thus become the attorney of record for that party, that attorney's authority as an officer of the court could not be limited by any private agreement between the client and the attorney, and if the attorney of record continued to act as such after the attorney had in fact been discharged, the client continued to be bound thereby, until the record which established the attorney's relationship was made to indicate the attorney's discharge. Rooke v. Day, 46 Ga. App. 379, 167 S.E. 762 (1932).

Defendants' rights unaffected by undisclosed attorney discharge. — Rights of defendants in a cause are not affected by the plaintiff's undisclosed discharge of plaintiff's attorney; and so long as the plaintiff permits the attorney to remain the plaintiff's attorney of record, the plaintiff is bound, as against the defendants' ignorance, without fault on their part, of the attorney's discharge, by any acts that by virtue of plaintiff's retainer the attorney was authorized to do, and the same rule applies if the attorney personally withdraws from the case. Corbin v. Goepper, 184 Ga. 559, 192 S.E. 24 (1937).

Attorney's discharge of defendants binding on client. — Absent evidence on the record of any fraud, collusion, accident, mistake, or violation of express direction, an attorney's decision to discharge parties defendant, presumably on the ground that the statute of limitations

Discharge of Attorney or Parties (Cont'd)

had run as to those defendants, is binding on the clients over their objection, even if there may be some question as to whether the statute of limitations had run as to these defendants. Smith v. Emory Univ., 137 Ga. App. 785, 225 S.E.2d 63, cert. denied, 429 U.S. 869, 97 S. Ct. 180, 50 L. Ed. 2d 149 (1976).

Remedies for Unauthorized Settlement

Suit against attorney. — Client's remedy for unauthorized settlement is not to forbid such settlement in the first place, but to force the client to sue the client's own lawyer after the fact under the Rules and Regulations of the State Bar of Georgia. Vandiver v. McFarland, 179 Ga. App. 411, 346 S.E.2d 854 (1986).

Client not liable for attorney's illegal acts. — Attorney, hired for the sole purpose of collecting moneys on a judgment, who performs tortious or illegal acts without the client's authorization or ratification does not make the client liable because the general retention of the attorney only authorizes legal acts by the attorney. Plant v. Trust Co., 168 Ga. App. 909, 310 S.E.2d 745 (1983).

Practice and Procedure

Violation in personal injury action. — Attorney committed an obvious violation of Ga. St. Bar R. 4-102(d):1.2 and O.C.G.A. § 15-19-5 when the attorney obtained a settlement in a personal injury action without a Chapter 13 debtor's authority. In re Thornton, No. 04-51703-JDW, 2005 Bankr. LEXIS 3145 (Bankr. S.D. Ga. Aug. 8, 2005).

Effect of party negotiation. — O.C.G.A. § 15-19-5 did not apply to an alleged oral agreement among parties concerning distribution of property in an estate since the agreement was negotiated by the parties rather than the parties' attorneys. Hennessey v. Froehlich, 219 Ga. App. 98, 464 S.E.2d 246 (1995).

Attorney accepting service of process. — Attorney at law may not, within authority, accept service of process by which court acquires jurisdiction over a party. Rooke v. Day, 46 Ga. App. 379, 167 S.E. 762 (1932).

Notice to attorney of record is notice to client. — Notice as to orders and times of hearings to an attorney whose name is of record as counsel for a client, or who has represented the client as the leading or equally associated counsel in the previous trial or proceedings in the matter, is notice to the client. Fluellen v. Campbell Coal Co., 54 Ga. App. 355, 188 S.E. 54 (1936).

Unauthorized appearance of attorney. — Judgment rendered against party upon wholly unauthorized appearance of attorney may be set aside in a direct proceeding for that purpose. Rooke v. Day, 46 Ga. App. 379, 167 S.E. 762 (1932).

Clients' absence from court when judgment entered is immaterial. — Fact that clients are not actually present in court when judgment is rendered and entered with consent of their counsel, and know nothing about the judgment until later is immaterial. Howell v. Howell, 188 Ga. 803, 4 S.E.2d 835 (1939).

Client's assent to stipulation vests lawyer with authority. — If client gives express assent to a stipulation made by the client's lawyer referring issues to arbitration in action involving a dispute over a land line, the attorney is thereby vested with express authority to enter into the stipulation. Union Camp Corp. v. Dyal, 460 F.2d 678 (5th Cir.), cert. denied, 409 U.S. 849, 93 S. Ct. 56, 34 L. Ed. 2d 90 (1972).

Consent agreement upheld. — Defendant is estopped to assert that defendant's attorney's agreement to dismiss a juror is error when a consent agreement was announced by the judge in the defendant's presence, absent evidence of fraud, collusion, accident, mistake, or violation of express direction. Wilson v. State, 145 Ga. App. 315, 244 S.E.2d 355 (1978).

Judgment rendered with counsel's consent binding upon client. — Verdict and judgment rendered with consent of counsel is binding upon client, absent fraud and collusion upon the part of the counsel with whose consent such verdict and judgment is rendered. Reece v. McCormack, 188 Ga. 665, 4 S.E.2d 575 (1939).

Judgment rendered with consent of counsel is binding on client unless such consent was in violation of express directions given by client to attorney and known to the adverse party or that party's attorney, or unless there was otherwise fraud and collusion on the part of counsel so consenting, participated in by the adverse party or that party's attorney. Howell v. Howell, 188 Ga. 803, 4 S.E.2d 835 (1939).

Denial of motion to dismiss appeal. — If appeal and bond have been executed and signed by attorney for caveators to a will by typing the names of the caveators thereto and signing the names in the attorney's own handwriting followed by a seal, it is not error to deny the motion to dismiss the appeal. Ganns v. Worrell, 216 Ga. 512, 117 S.E.2d 533 (1960).

Denial of injunction held proper. — Since it was sought to enjoin collection of an execution upon the ground that it resulted by virtue of an agreement to consent to the judgment on which it issued if the case was not settled by the term at which the judgment was taken, and that the attorney making such agreement had never been employed by and did not represent the defendant, and since the evidence showed not only that an attorney admittedly employed by the defendant consented thereto, but there was also evidence that the attorney who made the agreement was employed by the defendant, a judgment denying an interlocutory injunction would not be reversed. Reece v. McCormack, 188 Ga. 665, 4 S.E.2d 575 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, §§ 3, 4.

C.J.S. — 7A C.J.S., Attorney and Client, §§ 195, 197.

ALR. — Right of attorney, parent, guardian ad litem, or next friend to remit from verdict or judgment in favor of infant, 30 ALR 1111.

Authority of attorney to bind client by extrinsic agreement to alter or vary terms of a written instrument, 76 ALR 1461.

Warrant of attorney to confess judgment signed by two or more as joint, or several, or joint and several, 89 ALR 403.

Validity and effect of cognovit or warrant of attorney to confess judgment in conditional sale contract, 89 ALR 1106.

Authority of attorney to employ another attorney at expense of client, 90 ALR 265.

Extrajudicial admissions of fact by attorney as binding client, 97 ALR 374.

Authority of next friend or guardian ad litem, or of attorney employed by him, to receive payment or acknowledge satisfaction of judgment in favor of infant, 111 ALR 686.

Authority of attorney to dismiss or otherwise terminate action, 56 ALR2d 1290.

Attorney's inaction as excuse for failure to timely prosecute action, 15 ALR3d 674.

Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 ALR3d 483.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit, 55 ALR3d 930.

Attorney's submission of dispute to arbitration, or amendment of arbitration agreement, without client's knowledge or consent, 48 ALR4th 127.

Authority of attorney to compromise action — modern cases, 90 ALR4th 326.

15-19-6. Handling client's funds.

Without special authority, attorneys cannot receive anything in discharge of a client's claim but the full amount in cash. (Orig. Code 1863, § 383; Code 1868, § 444; Code 1873, § 409; Code 1882, § 409; Civil Code 1895, § 4418; Civil Code 1910, § 4956; Code 1933, § 9-606.)

Law reviews. — For article on the law concerning settlements negotiated by attorneys, see 29 Ga. St. B.J. 10 (1992).

JUDICIAL DECISIONS

Analysis

General Consideration
Handling of Client's Funds by Attorney
Practice and Procedure

General Consideration

Applicability. — General application of O.C.G.A. § 15-19-6 is in regulation of the relationship between attorney and client and in matters in which the claim in question is for a sum certain. Brumbelow v. Northern Propane Gas Co., 251 Ga. 674, 308 S.E.2d 544 (1983).

Attorney does not have absolute authority in fact. — Although Brumbelow v. Northern Propane Gas Co., 251 Ga. 674, 308 S.E.2d 544 (1983) held an attorney's authority to settle may be considered to be plenary, the case did not hold the attorney has such authority in fact for the attorney does not. Lewis v. Uselton, 202 Ga. App. 875, 416 S.E.2d 94, cert. denied, 202 Ga. App. 905, 416 S.E.2d 94 (1992).

When a client employs an attorney, the client does not lose the client's power to say whether the client will compromise, and the attorney does not become owner of the litigation so as to be able to sell or give away the client's rights. Accordingly, without special authority, defamation plaintiff's attorney could not agree to a general release and the check-cashing business remained liable to the plaintiff. Lord v. Money Masters, Inc., 210 Ga. App. 21, 435 S.E.2d 247 (1993).

Defining special authority. — "Special authority" is authority other and greater than an attorney commonly has by virtue of the general retainer and refers to the client's special approval of the specific terms and amount proposed. The attorney can obtain this "special authority" only when and as a settlement is proposed. Lewis v. Uselton, 202 Ga. App. 875, 416 S.E.2d 94, cert. denied, 202 Ga. App. 905, 416 S.E.2d 94 (1992).

Attorney's authority need not be expressly delegated. — Authority of attorney as agent in particular instance need not be proved by express contract; authority may be established by the principal's conduct and course of dealing, and if one holds out another as one's agent, and by one's course of dealing indicates that the agent has certain authority and thus induces another to deal with the agent as such, one is estopped to deny that the agent has any authority which, as reasonably deducible from the conduct of the parties, the agent apparently has. Patterson v. Southern Ry., 41 Ga. App. 94, 151 S.E. 818 (1930).

No presumption of apparent authority. — When an attorney asserts reliance on another attorney's "apparent" authority, the attorney does so at that attorney's peril; there is no presumption of such authority and the burden of proof is on the attorney seeking to enforce a settlement. Lewis v. Uselton, 202 Ga. App. 875, 416 S.E.2d 94, cert. denied, 202 Ga. App. 905, 416 S.E.2d 94 (1992).

Attorney may not compromise client's claim. — Attorney may not compromise the client's claim or defense unless the compromise is specially authorized in writing or ratified, or unless the doctrine of estoppel, or some other special equity intervenes. Equitable Gen. Ins. Co. v. Johnson, 166 Ga. App. 215, 303 S.E.2d 757 (1983).

Attorney cannot settle absent consulting client. — Attorney may not settle or compromise on client's claim, defense, or property without obtaining "special authority," that is, without consulting the client as to a specific offer of settlement when the offer is made. Lewis v. Uselton, 202 Ga. App. 875, 416 S.E.2d 94, cert. denied, 202 Ga. App. 905, 416 S.E.2d 94 (1992).

Authority to receive lesser sum not presumed. — Presumption that the cli-

ent authorized the acceptance of a lesser amount must be proved by the defendant after a prima facie case of the amount due has been established. Kaiser & Bro. v. Hancock, 106 Ga. 217, 32 S.E. 123 (1898); United Glass Co. v. Chamlee, 135 Ga. 152, 68 S.E. 796 (1910); Evans v. Atlantic Nat'l Bank, 147 Ga. 621, 95 S.E. 219 (1918).

Authority of attorney to receive a lesser sum in payment will not be presumed. Johnson v. Starr Piano Co., 27 Ga. App. 425, 108 S.E. 811 (1921).

Mere acceptance by attorney for plaintiff in pending action of a sum less than the amount sued for would not raise a presumption that such a settlement was authorized by the plaintiff, although the settlement might be good pro tanto; and, in default of any proof going to show that the settlement was authorized by the attorney's client, the settlement would not be binding. Burnett v. Johnston, 45 Ga. App. 667, 165 S.E. 857 (1932).

Attorney has implied authority to make collection in cash. — If there is no apparent limitation on the attorney's authority, attorney at law who has had placed with the attorney an account for collection cannot accept from the debtor, in full accord and satisfaction, anything less than the full amount of the claim, and that in cash; nevertheless, authority to effectuate the collection gives to the attorney implied authority to do everything usual and immediately necessary to accomplish the main purpose of the agency, that of making the collection in cash. John Bean Mfg. Co. v. Citizens Bank, 60 Ga. App. 615, 4 S.E.2d 924 (1939), overruled on other grounds, Tifton Bank & Trust Co. v. Knight's Furn. Co., 215 Ga. App. 471, 452 S.E.2d 219 (1994).

Attorney as "special agent." — Attorney is not a general agent for all purposes, but the attorney's authority is limited to the particular purpose for which the attorney was retained and the attorney's authority to do other things must be inquired into; as a special agent, the attorney has no inherent power to dispose of the client's property or legal right, but must obtain special authority. Addley v. Beizer, 205 Ga. App. 714, 423 S.E.2d 398, cert. denied, 205 Ga. App. 899, 423 S.E.2d 398 (1992).

Attorney may only accept money for payment absent authorization. — Attorney who holds claim for collection has no authority to receive anything in payment of such claim except lawful and generally accepted money or currency, unless especially authorized to do so by the principal, and hence cannot ordinarily take promissory notes, drafts, warrants, deeds of trust, or land in satisfaction of the claim. John Bean Mfg. Co. v. Citizens Bank, 60 Ga. App. 615, 4 S.E.2d 924 (1939), overruled on other grounds, Tifton Bank & Trust Co. v. Knight's Furn. Co., 215 Ga. App. 471, 452 S.E.2d 219 (1994).

Full power and authority to settle. — Clients plainly instructed their attorney that the clients would settle for no less than $50,000; thus, the attorney had "full" authority to enter a settlement for the amount of $50,000. This "full power and authority" to settle accrued only after the amount of the settlement had been approved by the client. Lewis v. Uselton, 202 Ga. App. 875, 416 S.E.2d 94, cert. denied, 202 Ga. App. 905, 416 S.E.2d 94 (1992).

Sum accepted by attorney pursuant to settlement agreement is good. — If attorney agreed upon a settlement for less than the full amount and received from the defendant a check for the amount agreed upon, payable jointly to the client and the attorney, and endorsed the name of the client thereon and actually converted the check into cash, regardless of whether the attorney did or did not have authority to so endorse the check, the transaction amounted to payment to the attorney of the amount of cash represented by the check and actually received thereon, and was a payment pro tanto of the client's claim, whether or not such attorney was authorized to accept in settlement a lesser amount than the full sum claimed. Patterson v. Southern Ry., 41 Ga. App. 94, 151 S.E. 818 (1930).

While an attorney at law cannot, without special authority, receive anything in discharge of a client's claim but the full amount in cash, yet if the attorney actually enters upon an agreement for the compromise of the client's claim and actually receives, pursuant to such agreement, the sum agreed to be accepted in compro-

General Consideration (Cont'd)

mise, the settlement is good pro tanto. Crouch v. Fisher, 43 Ga. App. 484, 159 S.E. 746 (1931).

Attorney cannot unilaterally agree to place credits on client's claim. — Attorney holding a client's claim for collection cannot, without special authority from the client, bind the client by an agreement to credit on the claim an amount due by the attorney, or to assume and credit thereon the debt of another to the client's debtor. John Bean Mfg. Co. v. Citizens Bank, 60 Ga. App. 615, 4 S.E.2d 924 (1939), overruled on other grounds, Tifton Bank & Trust Co. v. Knight's Furn. Co., 215 Ga. App. 471, 452 S.E.2d 219 (1994).

Attorney may not bind principal as payment of claim. — Attorney may not accept property to be used by the attorney and bind the attorney's principal as payment of claim placed with the attorney for collection, nor may the attorney receive property other than money, nor receive the drafts of third persons payable to the debtor and endorsed by the debtor for payment of the client's claim. John Bean Mfg. Co. v. Citizens Bank, 60 Ga. App. 615, 4 S.E.2d 924 (1939), overruled on other grounds, Tifton Bank & Trust Co. v. Knight's Furn. Co., 215 Ga. App. 471, 452 S.E.2d 219 (1994).

Ratification by client of payment. — Client may ratify the acceptance of a note in payment of a claim. Jeter & Forbes v. Haviland, Keese & Co., 24 Ga. 252 (1858).

Client may ratify a part payment of money in full satisfaction of the debt. Johnson v. Starr Piano Co., 27 Ga. App. 425, 108 S.E. 811 (1921).

Settlement of tax executions by Attorney General. — Attorney General has no authority to settle tax executions at less than full amount; such authority must come from the state in order to bind the statute. State v. Southwestern R.R., 66 Ga. 403 (1881); State v. Southwestern R.R., 70 Ga. 11 (1883).

Enforcement of settlement not determinative of rules violation. — Although a third party may enforce a settlement agreement that an attorney made without proper authority, that enforcement does not determine whether the attorney has violated disciplinary rules of the State Bar. In re Lewis, 266 Ga. 61, 463 S.E.2d 862 (1995).

Cited in Sciple v. Northcutt, 62 Ga. 42 (1878); Bell & Harrell v. Kwilecki, 11 Ga. App. 9, 74 S.E. 444 (1912); Rawls v. Heath, 36 Ga. App. 372, 136 S.E. 822 (1927); Commins v. Ross, 44 Ga. App. 182, 160 S.E. 679 (1931); Whatley v. Carpenter, 198 Ga. 408, 31 S.E.2d 659 (1944); Hasty v. Grimes, 96 Ga. App. 145, 99 S.E.2d 450 (1957); Pembroke State Bank v. Warnell, 218 Ga. App. 98, 461 S.E.2d 231 (1995); Wilson & Assocs., Attys., P.C. v. Parker (In re Parker), No. A02-69747-MGD, 2005 Bankr. LEXIS 1926 (Bankr. N.D. Ga. Aug. 19, 2005).

Handling of Client's Funds by Attorney

Attorney may deduct commission fees before remitting collection to client. — Attorney having an interest in a collection in the nature of a commission for services for effectuating the collection has authority to endorse the name of the client to whom the check is made payable, personally as attorney, in order that the attorney may deduct the commission fees before remittance of the collection to the client. John Bean Mfg. Co. v. Citizens Bank, 60 Ga. App. 615, 4 S.E.2d 924 (1939), overruled on other grounds, Tifton Bank & Trust Co. v. Knight's Furn. Co., 215 Ga. App. 471, 452 S.E.2d 219 (1994).

Attorney may deposit proceeds in individual or professional account. — If attorney has authority to endorse a check payable to the client, the attorney has apparent authority to deposit the proceeds thereof either in the attorney's individual account or the attorney's account as attorney. John Bean Mfg. Co. v. Citizens Bank, 60 Ga. App. 615, 4 S.E.2d 924 (1939), overruled on other grounds, Tifton Bank & Trust Co. v. Knight's Furn. Co., 215 Ga. App. 471, 452 S.E.2d 219 (1994).

Attorney has authority to endorse client's name on check for full amount. — Attorney with whom has been placed an account for collection, with no limitation on the attorney's authority as to the manner of collection, on receipt from the debtor of a check in the full amount of

the claim and payable to the order of the client, has, without any authority from the client, authority to endorse the name of the client personally as attorney in order to liquidate the collection; nor is the rule modified should the attorney, in lieu of taking manual possession of the money, deposit the check either to the attorney's individual account or to the attorney's account as attorney. John Bean Mfg. Co. v. Citizens Bank, 60 Ga. App. 615, 4 S.E.2d 924 (1939), overruled on other grounds, Tifton Bank & Trust Co. v. Knight's Furn. Co., 215 Ga. App. 471, 452 S.E.2d 219 (1994).

Bank not liable to client if attorneys defaulted. — Action of attorneys with whom a claim was placed for collection in endorsing client's name on check in settlement thereof, by themselves as attorneys, and depositing check to their credit, did not constitute the crime of forgery as the attorneys had authority to so endorse the check; hence, the bank was within the bank's right and authority when the bank cashed or paid the check by deposit to the credit of the attorneys making the collection, and would not, under the facts, be liable to the client of the attorneys, to whom the attorneys may have defaulted in remittance of the proceeds arising from the collection. John Bean Mfg. Co. v. Citizens Bank, 60 Ga. App. 615, 4 S.E.2d 924 (1939), overruled on other grounds, Tifton Bank & Trust Co. v. Knight's Furn. Co., 215 Ga. App. 471, 452 S.E.2d 219 (1994).

Practice and Procedure

Collection of bill of sale by attorney. — Attorney employed to handle collection of bill of sale is not empowered to surrender the client's right or title to the property described in the bill of sale. Rogers v. Citizens Bank, 92 Ga. App. 399, 88 S.E.2d 548 (1955).

Client's ratification of attorney's acceptance of lesser amount. — If the client, upon being informed of the receipt of funds as settlement by the attorney, demanded payment thereof from the attorney, and in correspondence with defendant disclaimed the authority of the attorney to endorse the client's name upon the check and called upon defendant to pay the amount of the check because the check had been paid without the client's endorsement, and referring to its claim as one for the amount for which the check was issued, and in no way repudiating the authority of the attorney to actually settle the claim for less than the full amount thereof, the jury would be authorized to find that the client had ratified the action of the attorney, not in illegally endorsing the check, but in settling the claim for less than the full amount. Patterson v. Southern Ry., 41 Ga. App. 94, 151 S.E. 818 (1930).

Burden on defendant to show plaintiff's attorney authorized to settle for lesser amount. — If the defendant contends that the defendant settled the claim by paying the plaintiff's attorney less than the full amount thereof, the burden is upon the defendant to show affirmatively that the plaintiff's attorney had special authority from the client to make the settlement. High v. Hollis, 35 Ga. App. 195, 132 S.E. 260 (1926).

RESEARCH REFERENCES

C.J.S. — 7A C.J.S., Attorney and Client, § 198.

ALR. — Attorney's liability for failure to follow client's instructions, 56 ALR 962.

Authority of attorney to bind client by extrinsic agreement to alter or vary terms of a written instrument, 76 ALR 1461.

Validity of stipulation, in contract between attorney and client, prohibiting or restricting right of latter to compromise without former's consent, and effect of invalid stipulation in that regard upon rest of contract, 121 ALR 1122.

Discharge of debtor who makes payment by delivering checks payable to creditor to latter's agent, where agent forges creditor's signature and absconds with proceeds, 49 ALR3d 843.

Authority of attorney to compromise action — modern cases, 90 ALR4th 326.

15-19-7. Proof of authority.

The presiding judge or justice, on motion of either party and on showing reasonable grounds therefor, may require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears and to disclose, whenever pertinent to any issue, the name of the person who employed him and may grant any order that justice may require on such investigation. However, prima facie, attorneys shall be held authorized to represent properly any case in which they may appear. (Orig. Code 1863, § 387; Code 1868, § 448; Code 1873, § 413; Code 1882, § 413; Civil Code 1895, § 4423; Civil Code 1910, § 4961; Code 1933, § 9-604.)

JUDICIAL DECISIONS

Analysis

General Consideration
Practice and Procedure

General Consideration

Attorney's authority is presumed. — Presumption is that attorneys are duly authorized to represent in particular matter persons for whom attorneys appear. Howell v. Howell, 188 Ga. 803, 4 S.E.2d 835 (1939).

Apparent authority of attorney. — Rule giving attorneys apparent authority, which is plenary from the perspective of the opposing party, applies only to an attorney of record, that is, if the attorney is the attorney for a particular client and is actually authorized to represent the client in the cause or proceeding in which the third party seeks to bind the attorney. Addley v. Beizer, 205 Ga. App. 714, 423 S.E.2d 398, cert. denied, 205 Ga. App. 899, 423 S.E.2d 398 (1992).

Presumption that attorneys are duly authorized to represent in particular matters persons for whom the attorneys appear can only be rebutted in the manner provided in this section. Tingle v. Arnold, Cate & Allen, 129 Ga. App. 134, 199 S.E.2d 260 (1973); Londeau v. Davis, 136 Ga. App. 25, 220 S.E.2d 43 (1975).

Presumption that attorney acts with authority rebuttable. — No warrant of attorney is required in Georgia, and an acknowledgment of service signed by one as attorney for defendant is prima facie authorized until the contrary appears; this presumption is not conclusive but may be rebutted by the party for whom the attorney purports to act if the party proceeds in due time, the burden being upon the party to show the want of authority in the attorney. Jackson v. Jackson, 199 Ga. 716, 35 S.E.2d 258 (1945).

Attorney presumed to have authority to sue absent instructions. — When creditor places with attorney for collection a claim against another, unless the creditor gives direct instructions not to bring an action, the law presumes the attorney has the authority to bring the action and to do all else necessary to effect the collection. M & M Mars v. Jones, 129 Ga. App. 389, 199 S.E.2d 617 (1973).

Authority of attorney acknowledging service of bill of exceptions presumed. — Attorney, in acknowledging service of a bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50) on behalf of the defendant in error, is presumably, at the time, attorney for the defendant in error with authority to make the acknowledgment. Bell v. Macon Fin. Co., 42 Ga. App. 258, 155 S.E. 493 (1930).

Appellate courts cannot review attorney's authority to acknowledge service. — Issue of whether attorney who has acknowledged service of bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50) for and on behalf of the defendant

in error had authority to do so cannot be determined in the Court of Appeals. Bell v. Macon Fin. Co., 42 Ga. App. 258, 155 S.E. 493 (1930).

Acknowledgment of service binds on defendant absent contrary showing. — Acknowledgment of service by attorney for defendant estops attorney from later contending that the attorney acted without authority; thus, if no counter showing is made on behalf of the defendant, by someone not estopped, that the attorney did not in fact represent the defendant, the court does not err in ruling that the acknowledgment was authorized and binding upon the defendant. Jackson v. Jackson, 199 Ga. 716, 35 S.E.2d 258 (1945).

Actions open to court on showing of unauthorized appearance of attorney. — General rule is that at any stage of the proceedings, when it is properly suggested to the court that a party plaintiff is represented by unauthorized counsel, the court may call such counsel to show the counsel's authority, and, if the counsel is unauthorized, the court may suspend further proceedings or dismiss the action so far as such party is concerned; if, however, the cause has proceeded to final judgment without such question being raised, then only the party who was not properly represented may take advantage of such unauthorized appearance. Felker v. Johnson, 189 Ga. 797, 7 S.E.2d 668 (1940).

Judgment upon unauthorized appearance may be set aside. — Judgment rendered against party, either plaintiff or defendant, upon a wholly unauthorized appearance of attorney, if the act of the attorney is not ratified, will be set aside in a direct proceeding for that purpose, in law or equity, if the party is not guilty of unreasonable delay after notice or knowledge of the judgment; and this relief will be granted irrespective of the solvency of the attorney making the appearance. Jackson v. Jackson, 199 Ga. 716, 35 S.E.2d 258 (1945).

Consequences suffered by attorney acting without authority. — In this state no warrant of attorney is required by Georgia's laws or by the practice of Georgia's courts to entitle an attorney to appear for a party litigant either in the trial or appellate court; and the strong presumption arises from the attorney's appearance that the attorney is authorized to appear and to act for the client whom the attorney assumes to represent since the attorney is an officer of the court and may be found in contempt of court and subject to a fine if the attorney appears for a person without being employed, and may be liable in damages for any loss or injury sustained by a person who gave the attorney no authority to represent that party. Royal Millinery Co. v. Elgin Hat Co., 66 Ga. App. 734, 19 S.E.2d 185 (1942).

Representation of multiple defendants. — Plaintiff's conclusory statement that to the best of plaintiff's knowledge, information, and belief an attorney did not have authority to represent each defendant in the case did not provide reasonable grounds to require proof of the attorney's authority. Ware v. Fidelity Acceptance Corp., 225 Ga. App. 41, 482 S.E.2d 536 (1997).

Cited in Malsby & Co. v. Widincamp, 143 Ga. 168, 84 S.E. 544 (1915); Carlock v. Emery, 104 Ga. App. 783, 123 S.E.2d 309 (1961); Hodges v. Youmans, 129 Ga. App. 481, 200 S.E.2d 157 (1973); Freeman v. Irving-Cloud Pub. Co., 157 Ga. App. 624, 278 S.E.2d 167 (1981); Board of Tax Assessors v. Clary, 161 Ga. App. 828, 290 S.E.2d 110 (1982); Newell v. Brown, 187 Ga. App. 9, 369 S.E.2d 499 (1988).

Practice and Procedure

Burden on client to show attorney in foreign state acted without authority. — If in action in this state the defendant, whether a natural person or a corporation, is seeking to escape the binding effect of a foreign judgment on the ground of lack of jurisdiction, and the exemplification of the record of the action in the foreign state shows that the defendant appeared by attorney at law and filed a pleading, the defendant bears the burden of introducing evidence to show that the attorney acted without authority. Royal Millinery Co. v. Elgin Hat Co., 66 Ga. App. 734, 19 S.E.2d 185 (1942).

Estoppel. — If a client acquiesced for 16 years to a judgment confessed by an attorney, the client is estopped to deny the attorney's authority now. Parish v.

Practice and Procedure (Cont'd)

McLeod, 73 Ga. 123 (1884).

Action authorized absent contrary showing. — If the petition in the case was signed by counsel as "attorneys for plaintiff," and the presumption is that the attorneys were authorized to represent all of the plaintiffs named in the petition, there being no evidence to overcome this presumption, the court did not err in finding that the action was authorized. Aycock v. Williams, 185 Ga. 585, 196 S.E. 54 (1938).

If in an action against several defendants an attorney filed an answer and general and special demurrers (now motions to dismiss), signing the same as "Defendants' Attorney," it will be presumed, nothing to the contrary appearing, that the attorney was in fact authorized to represent all of such defendants, and to file such pleadings on defendant's behalf. Cannon v. Whiddon, 194 Ga. 417, 21 S.E.2d 850 (1942).

May inquire into authority of assistant attorneys absent objection. — In prosecution for assault with intent to murder, court did not err in failing to inquire as to the authority of two attorneys who allegedly assisted the solicitor general (now district attorney) in the presentation of the case since no request at all was made to the court and no objection was made by the defendant. McCoy v. State, 74 Ga. App. 889, 41 S.E.2d 830 (1947).

Attorney's preparing papers for client sufficient to find employment. — If an attorney prepared papers which were adopted by the client and the opposing counsel recognized that attorney as an attorney in the case, this was sufficient evidence of employment by the client. Hood & Robinson v. Ware, 34 Ga. 328 (1866); Simms v. Floyd, 65 Ga. 719 (1880).

Must dismiss garnishment proceedings if attorney unauthorized. — If garnishment proceedings have been instituted upon affidavit of attorney at law, who has no authority to act for the personal representative of deceased plaintiff and who is acting in the interest of a creditor of a deceased plaintiff, and the personal representative of the deceased plaintiff moves to dismiss the garnishment proceedings on the ground that the attorney was acting without authority and that the deceased had not authorized the institution of such proceedings, it was error for the court to render a judgment refusing to dismiss the proceedings. Arnold v. Citizens' & S. Nat'l Bank, 47 Ga. App. 254, 170 S.E. 316 (1933).

Question of attorney's authority to appear before appellate stage. — If defendant in error fails to question attorney's authority to appear as one of counsel for plaintiff in error before the superior court judge until the case has reached the Court of Appeals, it is too late for the defendant in error to be heard on the question. New Amsterdam Cas. Co. v. Russell, 102 Ga. App. 597, 117 S.E.2d 239 (1960); Tingle v. Arnold, Cate & Allen, 129 Ga. App. 134, 199 S.E.2d 260 (1973).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 156 et seq.

C.J.S. — 7A C.J.S., Attorney and Client, § 197.

ALR. — Agreement or understanding between attorney and client to use money for unlawful purposes as affecting their rights inter se, 20 ALR 1476; 26 ALR 98.

Ratification of attorney's unauthorized compromise of action, 5 ALR5th 56.

15-19-8. Relief from acts of unauthorized attorney.

If it is alleged by a party for whom an attorney appears that the attorney does so without authority, the court, at any stage of the proceedings, if fully satisfied that the allegation is true, may relieve the party for whom the attorney assumed to appear from the consequences of his acts. (Orig. Code 1863, § 385; Code 1868, § 446; Code 1873,

§ 411; Code 1882, § 411; Civil Code 1895, § 4421; Civil Code 1910, § 4959; Code 1933, § 9-603.)

JUDICIAL DECISIONS

One not bound by counsel acting for one's benefit but employed by others. — One is not bound by acts of counsel not employed by that person even though such counsel is employed by others for that person's benefit. Lowance v. Dempsey, 99 Ga. App. 592, 109 S.E.2d 318 (1959).

Party may accept benefits of unauthorized acts by ratifying acts. — While as a general rule a party is not bound by the acts of an attorney who purports to represent that party, but without being employed so to do, and need not accept any benefits personally as a result of such unauthorized appearance, the party may do so by ratifying the attorney's acts as in other cases of agency. Felker v. Johnson, 189 Ga. 797, 7 S.E.2d 668 (1940).

Insured not bound by acts of attorneys for insurance company. — Attorneys who filed original action seeking recovery of property damage to an automobile were properly representing their client insurance company, but the attorneys were not authorized by the insured to file this or any other action, and insured would not, over proper objection, be bound by the attorneys' acts in such manner as would preclude the insured from prosecuting an action in the superior court, a court having exclusive jurisdiction of personal injury actions. Lowance v. Dempsey, 99 Ga. App. 592, 109 S.E.2d 318 (1959).

Attorney's actual authority. — Fact that an attorney may have actual authority to act for a client at the direction of another person does not mean the attorney is authorized to act as agent for that other person individually; the attorney's actual authority is on its face to be construed as confined strictly to representation of the attorney's actual client. Addley v. Beizer, 205 Ga. App. 714, 423 S.E.2d 398, cert. denied, 205 Ga. App. 899, 423 S.E.2d 398 (1992).

Action brought by insurer dismissed without prejudice to insured. — If loan receipt signed by plaintiff insured to insurance company nowhere authorized that company to commence and prosecute action for plaintiff, nor authorized the attorneys representing the insurance company to do so, but obligated plaintiff promptly to present plaintiff's claim and, if necessary, to commence and prosecute an action, pledging any recovery to the company as security for the repayment of the loan, the evidence demanded the finding that the action commenced in the civil court by the attorneys for the insurance company and in the name of the plaintiff was unauthorized and the plaintiff had the right as a matter of law to have that action dismissed without prejudice to the plaintiff. Lowance v. Dempsey, 99 Ga. App. 592, 109 S.E.2d 318 (1959).

Cited in Lydick v. Napier, 105 Ga. App. 820, 125 S.E.2d 701 (1962); Londeau v. Davis, 136 Ga. App. 25, 220 S.E.2d 43 (1975); Slaughter v. State, 168 Ga. App. 484, 309 S.E.2d 675 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 147.

C.J.S. — 7A C.J.S., Attorney and Client, § 235.

ALR. — Attack on domestic judgment on ground of unauthorized appearance for defendant by attorney, 88 ALR 12.

Warrant of attorney to confess judgment signed by two or more as joint, or several, or joint and several, 89 ALR 403.

When attorney's power deemed coupled with an interest so as to prevent discharge or revocation, 98 ALR 923.

Service of notice to modify divorce de-

cree or other judgment as to child's custody upon attorney who represented opposing party, 42 ALR2d 1115.

Authority of attorney to dismiss or otherwise terminate action, 56 ALR2d 1290.

Right of attorney to continue divorce or separation suit against wishes of his client, 92 ALR2d 1009.

15-19-9. Unauthorized appearance as contempt; penalty.

Any attorney appearing for a person without being employed, unless by leave of the court, is guilty of a contempt of court and shall be fined not less than $500.00. (Orig. Code 1863, § 386; Code 1868, § 447; Code 1873, § 412; Code 1882, § 412; Civil Code 1895, § 4422; Civil Code 1910, § 4960; Code 1933, § 9-602.)

JUDICIAL DECISIONS

This section leaves the trial judge no discretion whatever. M & M Mars v. Jones, 129 Ga. App. 389, 199 S.E.2d 617 (1973).

Applicability in federal court. — O.C.G.A. § 15-19-9 had no applicability in federal court as the statute was designed to enable state courts to discipline attorneys who purported to act for litigants but lacked the requisite authority to do so. Crowder v. Altegra Credit Co. (In re Crowder), No. 03-76982, 2006 Bankr. LEXIS 1356 (Bankr. N.D. Ga. July 7, 2006).

Cited in Bell v. Macon Fin. Co., 42 Ga. App. 258, 155 S.E. 493 (1930); Thomas v. Hubert, 84 Ga. App. 710, 66 S.E.2d 924 (1951); Studdard v. Evans, 108 Ga. App. 819, 135 S.E.2d 60 (1964).

RESEARCH REFERENCES

C.J.S. — 7A C.J.S., Attorney and Client, § 235.

ALR. — Use of affidavits to establish contempt, 79 ALR2d 657.

Right of attorney to continue divorce or separation suit against wishes of his client, 92 ALR2d 1009.

15-19-10. Which of several counsel to be given preference in absence of client.

(a) As used in this Code section, the term "leading counsel" means the person who, at the time of the trial or the raising of any issue connected with the case, is, in the judgment of the court, the counsel upon whom the client relies more than any other.

(b) When two or more attorneys employed on the same side dispute about the direction to be given to their case and the client is not present, the judge shall hear all the facts and give preference to the leading counsel.

(c) If there is more than one leading counsel, the court shall, as between them, give preference to the counsel who was first employed. (Orig. Code 1863, §§ 388, 389, 390; Code 1868, §§ 449, 450, 451; Code 1873, §§ 414, 415, 416; Code 1882, §§ 414, 415, 416; Civil Code 1895,

§§ 4424, 4425, 4426; Civil Code 1910, §§ 4962, 4963, 4964; Code 1933, §§ 9-608, 9-609, 9-610.)

JUDICIAL DECISIONS

Presumption that name of attorney on pleadings is lead counsel. — Attorney whose name is subscribed as such to pleadings, if not surreptitiously appended, is to be regarded as leading counsel. Dalton City Co. v. Dalton Mfg. Co., 33 Ga. 243 (1862); Chivers v. State, 5 Ga. App. 654, 63 S.E. 703 (1909).

Assistance of assistant district attorney. — Nothing in this section inhibits assistant district attorney from assisting district attorney in the trial of a criminal case. Lashley v. State, 132 Ga. App. 427, 208 S.E.2d 200 (1974).

Appointed counsel may be named leading counsel. — If defendant expressed no preference and appointed counsel was ready for trial, while retained counsel was insisting upon a continuance in order to prepare for trial, the trial court did not abuse the court's discretion in naming appointed counsel as leading counsel. Nations v. State, 234 Ga. 709, 217 S.E.2d 287 (1975).

Cited in Smith v. State, 78 Ga. 71 (1886); Whitley v. Clegg, 120 Ga. 1038, 48 S.E. 406 (1904); Cherry v. Coast House, Ltd., 257 Ga. 403, 359 S.E.2d 904 (1987).

RESEARCH REFERENCES

ALR. — Rights of attorneys leaving firm with respect to firm clients, 1 ALR4th 1164.

15-19-11. Attorney's retainer; recovery for services rendered.

Unless otherwise stipulated, one-half of the fee in any case is a retainer and is due at any time unless the attorney, without sufficient cause, abandons the case before rendering service to that value. In cases where he has rendered such service but cannot render the balance of service due to the act of his client, providential cause, election to office, or removal out of the state, he is entitled to retain such amount or a due proportion thereof if collected, or if not collected, to bring an action to collect it. Where no special contract is made, the attorney may recover for the services actually rendered. (Orig. Code 1863, § 380; Code 1868, § 441; Code 1873, § 406; Code 1882, § 406; Civil Code 1895, § 4415; Civil Code 1910, § 4953; Code 1933, § 9-611.)

Law reviews. — For article advocating that payment of attorneys fees be assigned to the losing party, see 18 Ga. B.J. 439 (1956). For article discussing the determination of reasonable attorney's fees, see 19 Ga. B.J. 201 (1956). For article, "The Rights of Attorneys and Their Clients in Fee Disputes," see 16 Ga. St. B.J. 150 (1980). For article, "Trust Account Rules for Georgia Lawyers," see 24 Ga. St. B.J. 22 (1987).

For comment on Citizen's & S. Nat'l Bank v. Orkin, 223 Ga. 385, 156 S.E.2d 86 (1967), see 4 Ga. St. B.J. 398 (1968).

JUDICIAL DECISIONS

Court's discretion in determining attorneys' fees. — Amount of attorneys' fees is left to sound discretion of trial judge since court is itself an expert on the question of attorneys' fees and, as such, may form the court's own independent judgment. Walker v. Ralston Purina Co., 409 F. Supp. 101 (M.D. Ga. 1976).

Client cannot dismiss action without paying attorney's fees. Twiggs v. Chambers, 56 Ga. 279 (1876); Manning v. Manning, 61 Ga. 137 (1878).

Withdrawing writ of error. — Writ of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50) to the Supreme Court cannot be withdrawn without consent of counsel, employed under a contract granting a contingent fee. Walker v. Equitable Mtg. Co., 114 Ga. 862, 40 S.E. 1010 (1902); Richmond County v. Richmond County Reformatory Inst., 141 Ga. 457, 81 S.E. 232 (1914); Corbin v. McCrary, 22 Ga. App. 472, 96 S.E. 445, cert. denied, 22 Ga. App. 803 (1918).

Compensation of dismissed attorney. — Court should ensure that attorney receives reasonable compensation for the attorney's services if the attorney is dismissed. Nodvin v. Fabian, 153 Ga. App. 716, 266 S.E.2d 253 (1980).

Contingent fee attorney recovering value of services. — When contingent fee client prevents contingency from happening, attorney can sue client for reasonable value of services. Nodvin v. Fabian, 153 Ga. App. 716, 266 S.E.2d 253 (1980).

Contingent fee attorney who is discharged is not permitted to recover the attorney's fee by a motion for the fee in the proceeding in which the fee was earned. Nodvin v. Fabian, 153 Ga. App. 716, 266 S.E.2d 253 (1980).

Attorney paid liquidated demand against estate of deceased client. — If counsel was employed at a gross sum, and the client died before all the services were rendered, one half of the stipulated fee was a liquidated demand against the estate of the latter. McNulty, George & Hall v. Pruden, 62 Ga. 135 (1878).

Rendering of services for client not formal party. — Attorney may render services for person or corporation in action to which client is not a formal party, such as keeping it out of action. Dublin & S.W. Ry. v. Akerman & Akerman, 2 Ga. App. 746, 59 S.E. 10 (1907).

Client's liability for associate counsel fees. — Client is not liable for fees of associate counsel hired by leading counsel without the client's consent. Mathews v. Giles, 108 Ga. 364, 33 S.E. 1006 (1899).

Disagreement over the amount due may be ruled upon. Cothran v. Brower, 75 Ga. 494 (1885).

Client liable for full amount of attorney's fees after post-judgment settlement. — When attorney has taken a claim on the terms that the attorney is to have a certain percentage of the recovery, and after judgment client and opposite party settle controversy, the client is liable to the attorney for the full amount of the attorney's fee. Coker v. Oliver, 4 Ga. App. 728, 62 S.E. 483 (1908).

Attorney entitled to stipulated percentage of amount collected. — When the payee of a note, which contains a provision for 10 percent attorney's fees if the note is "collected by law through an attorney," enters with an attorney into an agreement by which it is provided that the attorney will collect the note or "bring about settlement which is satisfactory to" the payee for a specified sum, but that "the 10 percent for collection by an attorney as stated in the note will be in lieu of the $75.00 attorney's fee and in full payment of all demands, provided that" the note is reduced to a judgment which includes attorney's fees provided for in the note, the attorney, upon the reduction of the note to judgment, is entitled to a fee of 10 percent out of the amount actually collected on the judgment. Stegall v. Edwards, 51 Ga. App. 738, 181 S.E. 502 (1935).

When recovery of attorney's fees on quantum meruit permitted. — Recovery of attorney's fees on quantum meruit basis is permitted only if no fee has been agreed upon or if the attorney cannot render the balance of the agreed services due to any of the contingencies provided in this section. Dickey v. Mingledorff, 110 Ga. App. 454, 138 S.E.2d 735 (1964).

Attorneys in alimony case paid amount subtracted from contractual fee. — If judgment in alimony case provides that a certain amount be paid to the attorneys of record, that amount, when paid to such attorneys, must be subtracted from the amount due the attorneys under a contract between the attorneys and the client. Dickey v. Mingledorff, 110 Ga. App. 454, 138 S.E.2d 735 (1964).

Cited in McIntire v. McQuade, 63 Ga. App. 116, 10 S.E.2d 233 (1940); Reed v. Williams, 160 Ga. App. 254, 287 S.E.2d 47 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, §§ 248 et seq., 256.

C.J.S. — 7A C.J.S., Attorney and Client, § 160 et seq.

ALR. — Agreement for contingent fee as assignment of interest in judgment, 2 ALR 454; 19 ALR 399.

Construction of contract as regards services contemplated by it where attorney claims compensation in addition to amount named therein, 2 ALR 844.

Amount or basis of recovery by attorney who takes case on contingent fee where client discontinues, settles, or compromises, 3 ALR 472; 40 ALR 1529.

Validity of statutory provision for attorneys' fees, 11 ALR 884; 90 ALR 530.

Right of attorney to retaining fee, 21 ALR 1442.

Lien of attorney on public fund or property, 24 ALR 933.

Interest on claim for legal services, 52 ALR 197.

What amounts to settlement of action within contractual provision in relation to compensation of attorney, 55 ALR 428.

Right of attorney to have case continued to protect his compensation, 67 ALR 442.

Allowance and apportionment of counsel fees in suit for partition, 73 ALR 16; 94 ALR2d 575.

Right of attorney to recover upon quantum meruit or implied contract for services rendered under champertous contract, 85 ALR 1365.

Attorneys' fees in suit for injunction, 89 ALR 1093.

Validity of provision for attorney fees in mortgage to federal land bank, 91 ALR 382.

Right of attorney rendering service to personal representative or testamentary trustee to equitable substitution or subrogation to the latter's right against the estate in respect of such services, 100 ALR 72.

Allowance of attorney's fee against property or fund increased or protected by attorney's services, 107 ALR 749.

Contract price as limit of attorney's recovery on quantum meruit in event of his discharge without fault on his part, 109 ALR 674.

Expenses incurred by attorney as affecting amount of his compensation under contingent fee contract, 116 ALR 1244.

Duty of attorney to advise client regarding the work involved and the amount of his compensation, 117 ALR 1008.

Rights, liabilities, and remedies of endorsers and endorsees in respect of stipulation in paper for attorneys' fees or costs of collection, 117 ALR 1236.

When statute of limitation commences to run against action by attorney employed on contingent fee who was discharged or withdrew before determination of litigation or other event upon which his compensation was contingent, 118 ALR 1281.

Adjustment or determination of compensation of discharged attorney as condition of substitution of attorney by court order, 124 ALR 725.

Attorney's contract for contingent fee as amounting to an equitable assignment of interest in cause of action, or proceeds of settlement thereof, 124 ALR 1508.

Lack of merit in cause of action or defense or client's loss of faith therein as justification for discharge of attorney employed on contingent fee precluding recovery of compensation by latter, 131 ALR 974.

Amount of compensation of attorney, in absence of agreement, as affected by intention that services should be gratuitous unless successful, or by client's lack of means to pay for services unless successful, 135 ALR 859.

Validity of contract between govern-

mental unit and attorney which makes compensation contingent upon results accomplished, 136 ALR 116.

Terms of attorney's contingent-fee contract as creating an equitable lien in his favor, 143 ALR 204.

Amount of attorney's compensation (in absence of contract or statute fixing amount), 143 ALR 672; 56 ALR2d 13; 57 ALR3d 475; 58 ALR3d 201; 59 ALR3d 152; 17 ALR5th 366.

Compensation of attorneys for services in connection with claim under Workmen's Compensation Act, 159 ALR 912.

Right of attorney to set off claim for unrelated services against client's claim for money collected, 173 ALR 429.

Amount of attorney's compensation (in absence of contract or statute fixing amount), 56 ALR2d 13; 57 ALR3d 475; 58 ALR3d 201; 59 ALR3d 152; 17 ALR5th 366.

Allowance of attorneys' fees as costs or damages in prohibition proceedings, 64 ALR2d 1329.

Division of fees or compensation between cooperating attorneys, 73 ALR2d 991.

Court rules limiting amount of contingent fees or otherwise imposing conditions on contingent fee contracts, 77 ALR2d 411.

What constitutes acceptance or ratification of, or acquiescence in, services rendered by attorney so as to raise implied promise to pay reasonable value thereof, 78 ALR2d 318.

Treatment of interest on judgment or award, in determining attorney's contingent fee, 82 ALR2d 953.

Attorney's recovery in quantum meruit for legal services rendered under a contract which is illegal or void as against public policy, 100 ALR2d 1378.

Right of attorney admitted in one state to recover compensation for services rendered in another state where he was not admitted to the bar, 11 ALR3d 907.

Construction of contingent fee contract as regards compensation for services after judgment or on appeal, 13 ALR3d 673.

Validity and effect of contract for attorney's compensation made after inception of attorney-client relationship, 13 ALR3d 701.

Construction and application of attorney's fee provision (42 U.S.C. § 406(b)(1)) of federal Social Security Act, 22 ALR3d 1081.

Attorney's right to compensation as affected by disbarment or suspension before complete performance, 24 ALR3d 1193; 59 ALR5th 693.

Time from which interest begins to run on fee or disbursements owed by client to attorney, 29 ALR3d 824.

Attorney's death, prior to final adjudication or settlement of case, as affecting compensation under contingent fee contract, 33 ALR3d 1374.

Attorneys' fees in class actions, 38 ALR3d 1384.

Amount of attorneys' compensation in absence of contract or statute fixing amount, 57 ALR3d 475.

Amount of attorneys' compensation in matters involving guardianship and trusts, 57 ALR3d 550.

Amount of attorneys' fees in tort actions, 57 ALR3d 584; 86 ALR Fed. 866.

Amount of attorney's compensation in matters involving real estate, 58 ALR3d 201.

Amount of attorney's compensation in proceedings involving wills and administration of decedents' estates, 58 ALR3d 317.

Right of party who is an attorney and appears for himself to award of attorney's fees against opposing party as element of costs, 78 ALR3d 1119.

Allowance of counsel fees in taxpayer's action in state court, 89 ALR3d 690.

Attorneys at law: fee collection practices as ground for disciplinary action, 91 ALR3d 583.

Limitation to quantum meruit recovery, where attorney employed under contingent fee contract is discharged without cause, 92 ALR3d 690.

Validity, construction, and effect of contract providing for contingent fee to defendant's attorney, 9 ALR4th 191.

Validity of statute establishing contingent fee scale for attorneys representing parties in medical malpractice actions, 12 ALR4th 23.

Attorney's charging lien as including services rendered or disbursements made in other than instant action or proceeding, 23 ALR4th 336.

Cost of services provided by paralegals or the like as compensable element of award in state court, 73 ALR4th 938.

Recovery of attorneys' fees and costs of litigation incurred as result of breach of agreement not to sue, 9 ALR5th 933.

Excessiveness or adequacy of attorneys' fees in matters involving real estate — modern cases, 10 ALR5th 448.

Excessiveness or adequacy of attorney's fees in domestic relations, 17 ALR5th 366.

Amount of attorney's fees in matters involving commercial and general business activities, 23 ALR5th 241.

Circumstances under which attorney retains right to compensation notwithstanding voluntary withdrawal from case, 53 ALR5th 287.

Court rules and rules of professional conduct limiting amount of contingent fees or otherwise imposing conditions on contingent fee contracts, 49 ALR6th 505.

15-19-12. Status of note or obligation given as fee when service not rendered; penalty for transfer.

Attorneys are prohibited from collecting any note or other contract in writing given as a fee in any case in which they have failed to attend to in person or by some competent attorney from the time of employment until the rendition of judgment. Any such note or written contract shall be null and void unless the attorney holding it was, by contract, released from the duty of attending to the case for which it was given. The transfer of such note or obligation subjects an attorney to forfeit and pay to the person from whom the same was taken double the amount thereof, recoverable in any court having jurisdiction of the same, unless the person is saved harmless against all fees, costs, and other necessary expenses on account thereof. (Laws 1831, Cobb's 1851 Digest, p. 91; Code 1863, §§ 378, 379; Code 1868, §§ 439, 440; Code 1873, §§ 404, 405; Code 1882, §§ 404, 405; Civil Code 1895, §§ 4413, 4414; Civil Code 1910, §§ 4951, 4952; Code 1933, §§ 9-615, 9-616.)

JUDICIAL DECISIONS

Calling upon associate counsel for services. — Associate counsel may not be called upon to perform services by reason of conduct of leading counsel. Cothran v. Brower, 75 Ga. 494 (1885).

Attorney by note not responsible for appeal. — Attorney to whom note is given for professional services, who attends to the cause of the attorney's client while the cause is pending and until the rendition of the judgment, does not fall within this section because the attorney decides not to enter an appeal. Copeland v. Eubanks, 175 Ga. 198, 165 S.E. 3 (1932).

Lack of consideration. — Failure of consideration cannot be urged against assignee of note who takes the note without notice and before maturity of the note. Copeland v. Eubanks, 175 Ga. 198, 165 S.E. 3 (1932).

Cited in Dickey v. Mingledorff, 110 Ga. App. 454, 138 S.E.2d 735 (1964); O'Kelley v. Evans, 224 Ga. 49, 159 S.E.2d 418 (1968); Alston v. Stubbs, 170 Ga. App. 417, 317 S.E.2d 272 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 240.

ALR. — Attorney's lien on papers or securities that come into his possession

otherwise than in his professional capacity, 2 ALR 1488.

Authority of attorney to employ another attorney at expense of client, 90 ALR 265.

Court rules limiting amount of contingent fees or otherwise imposing conditions on contingent fee contracts, 77 ALR2d 411.

Attorney's right to compensation as affected by disbarment or suspension before complete performance, 24 ALR3d 1193; 59 ALR5th 693.

Amount of attorney's compensation in matters involving real estate, 58 ALR3d 201.

Power of court to order restitution to wronged client in disciplinary proceeding against attorney, 75 ALR3d 307.

Legal malpractice in connection with attorney's withdrawal as counsel, 6 ALR4th 342.

Excessiveness or adequacy of attorneys' fees in matters involving real estate — modern cases, 10 ALR5th 448.

Amount of attorney's fees in matters involving commercial and general business activities, 23 ALR5th 241.

Circumstances under which attorney retains right to compensation notwithstanding voluntary withdrawal from case, 53 ALR5th 287.

Falsehoods, misrepresentations, impersonations, and other irresponsible conduct as bearing on requisite good moral character for admission to bar — Conduct related to admission to bar, 107 ALR5th 167.

Failure to pay creditors as affecting applicant's moral character for purposes of admission to the bar, 108 ALR5th 289.

15-19-13. Right to fees in claim cases.

In claim cases, the attorney causing the levy and prosecuting the rights of the plaintiff in execution shall be entitled to his fees from the proceeds of the property condemned although the holders of older liens may demand and recover the proceeds from the immediate client of the attorney. (Orig. Code 1863, § 1989; Code 1868, § 1979; Code 1873, § 1998; Code 1882, § 1998; Civil Code 1895, § 2824; Civil Code 1910, § 3374; Code 1933, § 9-612.)

JUDICIAL DECISIONS

Court's discretion in determining attorneys' fees. — Amount of attorneys' fees is left to sound discretion of trial judge since court is itself an expert on the question of attorneys' fees and, as such, may form the court's own independent judgment. Walker v. Ralston Purina Co., 409 F. Supp. 101 (M.D. Ga. 1976).

Party bringing money into court entitled to fees. — When by litigation with a claimant, money is brought into court, no matter what lien takes the money, the party bringing it into court by such litigation is entitled to fees. May & Co. v. Sibley, 69 Ga. 133 (1882).

Attorney representing fieri facias not preferred. — If money is realized simply by levy and sale, this section gives no preference to attorney representing the fieri facias which brings the money into court to the prejudice of other liens. Baxter v. Bates, 69 Ga. 587 (1882).

Attorney's fees provisions regarding receivership, garnishment, and claim proceedings are not applicable to give preference to attorney representing fi. fa. that brings money into court, to prejudice of older or superior liens, when money is realized by levy and sale. Johnston v. Higdon, 44 Ga. App. 313, 161 S.E. 382 (1931).

Cited in Porter v. Stewart, 163 Ga. 655, 137 S.E. 28 (1927); Greenwood v. McGee, 48 Ga. App. 578, 173 S.E. 468 (1934);

Harrison v. Harrison, 208 Ga. 70, 65 S.E.2d 173 (1951); Anderson v. Burnham, 12 Bankr. 286 (Bankr. N.D. Ga. 1981).

RESEARCH REFERENCES

ALR. — Liability of infant for attorney's services in personal-injury actions, 7 ALR 1011.

Lien of attorney on public fund or property, 24 ALR 933.

Attorneys' lien as subject to set-off against judgment, 34 ALR 323; 51 ALR 1268.

Validity of provision for attorney fees in mortgage to federal land bank, 91 ALR 382.

Allowance of attorney's fee against property or fund increased or protected by attorney's services, 107 ALR 749.

Statute relating to attorney's lien as affecting common-law or equitable lien, 120 ALR 1243.

Constitutionality of statute which by express terms or construction declares that attorneys' liens shall not be affected by settlement or compromise between the parties, 122 ALR 974.

Attorney's contract for contingent fee as amounting to an equitable assignment of interest in cause of action, or proceeds of settlement thereof, 124 ALR 1508.

Terms of attorney's contingent-fee contract as creating an equitable lien in his favor, 143 ALR 204.

Right of attorney to set off claim for unrelated services against client's claim for money collected, 173 ALR 429.

Attorney's right to lien or equitable assignment in respect of client's share or interest in decedent's estate, or in trust, 175 ALR 1132.

Court rules limiting amount of contingent fees or otherwise imposing conditions on contingent fee contracts, 77 ALR2d 411.

Amount of attorneys' compensation in absence of contract or statute fixing amount, 57 ALR3d 475.

Amount of attorney's compensation in matters involving real estate, 58 ALR3d 201.

Excessiveness or adequacy of attorneys' fees in matters involving real estate — modern cases, 10 ALR5th 448.

Limitation to quantum meruit recovery, where attorney employed under contingent-fee contract is discharged without cause, 56 ALR5th 1.

15-19-14. Liens for services rendered; priority; modes of enforcement; other rights.

(a) Attorneys at law shall have a lien on all papers and money of their clients in their possession for services rendered to them. They may retain the papers until the claims are satisfied and may apply the money to the satisfaction of the claims.

(b) Upon actions, judgments, and decrees for money, attorneys at law shall have a lien superior to all liens except tax liens; and no person shall be at liberty to satisfy such an action, judgment, or decree until the lien or claim of the attorney for his fees is fully satisfied. Attorneys at law shall have the same right and power over the actions, judgments, and decrees to enforce their liens as their clients had or may have for the amount due thereon to them.

(c) Upon all actions for the recovery of real or personal property and upon all judgments or decrees for the recovery of the same, attorneys at law shall have a lien for their fees on the property recovered superior to

all liens except liens for taxes, which may be enforced by mortgage and foreclosure by the attorneys at law or their lawful representatives as liens on personal property and real estate are enforced. The property recovered shall remain subject to the liens unless transferred to bona fide purchasers without notice.

(d) If an attorney at law files his assertion claiming a lien on property recovered in an action instituted by him, within 30 days after a recovery of the same, his lien shall bind all persons.

(e) The same liens and modes of enforcement thereof which are allowed to attorneys at law who are employed to bring an action for any property, upon the property recovered, shall be equally allowed to attorneys at law employed and serving in defense against such actions in case the defense is successful.

(f) This Code section shall not affect the rights of attorneys under Code Section 15-19-13 and decisions of the Supreme Court and Court of Appeals thereon. (Ga. L. 1873, p. 42, § 16; Code 1873, § 1989; Ga. L. 1880-81, p. 63, § 3; Code 1882, § 1989; Civil Code 1895, § 2814; Civil Code 1910, § 3364; Code 1933, § 9-613.)

Cross references. — Validity and enforcement of obligations to pay attorney's fees upon notes or other evidences of indebtedness, § 13-1-11. Liens generally, § 44-14-320 et seq.

Law reviews. — For article, "The Rights of Attorneys and Their Clients in Fee Disputes," see 16 Ga. St. B.J. 150 (1980). For article, "Trust Account Rules for Georgia Lawyers," see 24 Ga. St. B.J. 22 (1987). For annual survey of commercial law, see 43 Mercer L. Rev. 119 (1991). For article, "Setting the Fee When the Client Discharges a Contingent Fee Attorney," see 41 Emory L.J. 367 (1992). For annual survey article discussing legal ethics, see 51 Mercer L. Rev. 353 (1999). For annual survey article discussing trial practice and procedure, see 51 Mercer L. Rev. 487 (1999). For annual survey of legal ethics decisions, see 57 Mercer L. Rev. 273 (2005); 58 Mercer L. Rev. 239 (2006). For annual survey on legal ethics, see 64 Mercer L. Rev. 189 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Applicability. — This section is inapplicable if attorney's contingent fee contract is only entered into after judgment is taken. Wall v. Benningfield, 237 Ga. 173, 227 S.E.2d 13 (1976).

O.C.G.A. § 15-19-14 does not apply to actions in which neither money nor property may be gained for the plaintiffs or saved for the defendants. Griner v. Foskey, 158 Ga. App. 769, 282 S.E.2d 150 (1981).

Trial court erroneously granted part of the relief requested by a county in the county's suit seeking an order requiring the county's former county attorney to turn over all of the files generated during

the attorney's term of employment as county attorney. The court erroneously applied the foreseeable prejudice standard given that there was no evidence that the attorney was attempting to assert a lien under O.C.G.A. § 15-19-14(a) for unpaid legal fees. Putnam County v. Adams, 282 Ga. App. 226, 638 S.E.2d 404 (2006).

Section to be strictly construed. — Unless petition sets forth facts which bring the case within the terms of this section, the petition must fail as an action to foreclose a lien; this section is in derogation of the common law, and is to be strictly construed. Middleton v. Westmoreland, 164 Ga. 324, 138 S.E. 852 (1927).

Lien laws are to be strictly construed, and one who claims a lien must bring oneself clearly within the law. White v. Aiken, 197 Ga. 29, 28 S.E.2d 263 (1943); May v. May, 180 Ga. App. 581, 349 S.E.2d 766 (1986).

This section is in derogation of the common law, and is to be strictly construed; accordingly, this section will not be construed so as to apply to any factual situation not strictly within the statute's wording. Woodward v. Lawson, 225 Ga. 261, 167 S.E.2d 660, cert. denied, 396 U.S. 889, 90 S. Ct. 175, 24 L. Ed. 2d 163 (1969).

Where claim of lien to be filed. — State law requires the filing of a claim of lien in the county where the property subject to the lien is located for the perfection of an attorney's lien. Anderson v. Burnham, 12 Bankr. 286 (Bankr. N.D. Ga. 1981).

Ambit of subsection (a). — Subsection (a) of this section recognizes the attorney's common-law general or retaining lien on all papers and money belonging to the client which come into the attorney's hands until the attorney's claims for professional services rendered are satisfied; however, money delivered to the attorney by the client for a special purpose cannot be made the subject matter of a retaining lien in favor of the attorney. King v. Tyler, 148 Ga. App. 272, 250 S.E.2d 784 (1978).

Construction of subsection (b). — Subsection (b) of this section provides that so long as the relationship exists, the attorneys, for the purpose of enforcing the attorneys' liens, not only have the same right and power over judgments and decrees as the attorneys' clients, but have control over the actions as well; the subsection means nothing more. White v. Aiken, 197 Ga. 29, 28 S.E.2d 263 (1943).

Language of subsection (b) of this section will not be held to mean to deny to the client the right to discharge the client's attorney. White v. Aiken, 197 Ga. 29, 28 S.E.2d 263 (1943).

"Property recovered" requires action or settlement between adverse parties. — Property upon which an attorney seeks to impress a lien is not "property recovered" by the attorney within the meaning of subsection (c) of this section if there has been no action or settlement of a disputed claim between adverse parties as the result of the attorney's efforts. Woodward v. Lawson, 225 Ga. 261, 167 S.E.2d 660, cert. denied, 396 U.S. 889, 90 S. Ct. 175, 24 L. Ed. 2d 163 (1969).

Attorney's successful notice of lis pendens was not a recovery of real property within the meaning of subsection (c) of O.C.G.A. § 15-19-14. Decorating Direct, Inc. v. Crawford, 200 Bankr. 702 (Bankr. N.D. Ga. 1996).

Subsection (d) of O.C.G.A. § 15-19-14 applies only to liens arising under subsection (c); it does not concern liens arising in actions for money. Moore v. Diamond Mfg. Co., 123 Bankr. 125 (S.D. Ga. 1990), aff'd, 959 F.2d 972 (11th Cir. 1992).

Common law origin of retaining lien. — Attorney's retaining or "holding" lien, codified in this section, existed at common law and was founded and depended on possession of something to which the lien could attach. Davidson v. Collier, 104 Ga. App. 546, 122 S.E.2d 465 (1961).

Legal work must be performed for lien to attach. — There must be legal work performed by an attorney on behalf of a client for which a lien can attach under O.C.G.A. § 15-19-14(b). Recoba v. State, 167 Ga. App. 447, 306 S.E.2d 713 (1983).

Lien attaches to all fruits of attorney's labor and skill. — Lien attaches to fruits of labor and skill of the attorney, whether realized by judgment or decree,

General Consideration (Cont'd)

or by virtue of an award, or in any other way, as long as the fruits are the result of the attorney's exertions. Wooten v. Denmark, 85 Ga. 578, 11 S.E. 861 (1890); Barge v. Ownby, 170 Ga. 440, 153 S.E. 49 (1930); Camp v. United States Fid. & Guar. Co., 42 Ga. App. 653, 157 S.E. 209 (1931); Thomas v. Travelers Ins. Co., 53 Ga. App. 404, 185 S.E. 922 (1936); Brotherton v. Stone, 197 Ga. 74, 28 S.E.2d 467 (1943); John J. Woodside Co. v. Irwin, 79 Ga. App. 252, 53 S.E.2d 246 (1949).

"Fruit" of attorney's labor. — Subject matter against which an attorney's lien was attached needed to have been the fruit of the labor of the attorney so when the settlement in a breach of contract and negligent construction case resulted in the construction company's repurchase of the house and a monetary amount above the purchase price, the purchase price plus additional moneys were the "fruit" of the lawyer's labor, not the house; dismissal of the attorney's lien against the house was not error. Gutter-Parker v. Pridgen, 268 Ga. App. 205, 601 S.E.2d 707 (2004).

Discharge does not affect validity of lien. — Client's discharge of an attorney does not defeat the attorney's right to be paid; the right to receive compensation comes, not under the contract of employment, but under quantum meruit which is protected by O.C.G.A. § 15-19-14. Yetman v. Greer, Klosik & Daugherty, 225 Ga. App. 397, 483 S.E.2d 878 (1997), aff'd, 269 Ga. 271, 496 S.E.2d 693 (1998), aff'd, Greer, Klosik & Daugherty v. Yetman, 269 Ga. 271, 496 S.E.2d 693 (1998).

When a law firm entered into a contingent fee agreement with the firm's clients in a medical malpractice matter, and the clients discharged the firm before the clients received a recovery, the contract was not enforceable, because the contingency it called for, namely the clients' receipt of a recovery, upon which the firm's right to recover a fee under the contract was based, did not occur prior to the firm's discharge, but the firm could recover the reasonable value of the firm's services under quantum meruit. Ellerin & Assocs. v. Brawley, 263 Ga. App. 860, 589 S.E.2d 626 (2003).

Because a former attorney's O.C.G.A. § 15-19-14(b) lien was fixed as soon as the suit was filed and the award was based upon the former attorney's hourly fee and sufficient proof of the former attorney's work, the lien could not be divested by any subsequent settlement or contract. Howe & Assocs., P.C. v. Daniels, 274 Ga. App. 312, 618 S.E.2d 42 (2005), aff'd, 280 Ga. 803, 631 S.E.2d 356 (2006).

Attorney's lien is not only a lien against recovery but is a lien against action itself. Travelers Ins. Co. v. Bagwell, 116 Ga. App. 675, 158 S.E.2d 267 (1967).

Defending attorneys entitled to same liens as attorneys bringing actions. — Attorneys at law, employed and serving in defense against actions, have the same liens and means of foreclosure which are allowed to attorneys at law who are employed to sue for any property, if the defense is successful. Middleton v. Westmoreland, 164 Ga. 324, 138 S.E. 852 (1927).

Lien for services under Workers' Compensation Act. — Workers' Compensation Act (see now O.C.G.A. Ch. 9, T. 34) does not provide for any lien in favor of an attorney for services under the chapter, but the attorney's lien attaches to the award. Wilson v. Maryland Cas. Co., 71 Ga. App. 184, 30 S.E.2d 420 (1944).

Lawyer may not disburse trust funds to the lawyer. — Lawyer having control over a trust account has no more right to make a unilateral disbursal of the funds to the lawyer than the lawyer would to a stranger. Subsection (a) of O.C.G.A. § 15-19-14, in such a circumstance, must be understood to authorize the application of client funds held by an attorney to the satisfaction of liquidated sums owing to the attorney. In re Kunin, 252 Ga. 310, 313 S.E.2d 697 (1984).

An otherwise liquidated account for legal services cannot be rendered unliquidated by challenging the amount billed after the attorney has enforced the attorney's lien by disbursing sums from the trust account to the attorney's general operating account. Metropolitan Life Ins. Co. v. Price, 878 F. Supp. 219 (N.D. Ga. 1993).

Divorce and alimony. — Attorney cannot prevent dismissal by plaintiff of

action for divorce and alimony. Keefer v. Keefer, 140 Ga. 18, 78 S.E. 462, 46 L.R.A. (n.s.) 527 (1913).

This section has no application to matters of alimony and counsel fees. Hagstrom v. Hagstrom, 235 Ga. 853, 221 S.E.2d 602 (1976), overruled on other grounds, Southerland v. Southerland, 247 Ga. 585, 277 S.E.2d 684 (1981).

Lien not enforceable against child support payments. — Attorney's charging lien should not be allowed to nullify an award determined to be necessary to assure the support of a child and is not enforceable against child support payments. Law Office of Tony Center v. Baker, 185 Ga. App. 809, 366 S.E.2d 167 (1988).

Attorney's retention of a client's computer tapes prejudiced the client, and, in turn, the client's estate in bankruptcy by jeopardizing the sale of the bankrupt client's property or reducing the amount to be realized from such sale since the value of the attorney's lien claim was adequately protected by virtue of the lien attaching to any proceeds of the sale. Dabney v. Information Exch., Inc., 98 Bankr. 603 (Bankr. N.D. Ga. 1989).

Attorney's lien yields to ethical obligations. — While an attorney has a legal right to perfect a lien against all papers and money of the attorney's clients in the attorney's possession for services rendered to the clients under O.C.G.A. § 15-19-14(a), such right generally must yield to an attorney's ethical obligation not to prejudice a former client's ongoing suit by withholding the client's file in order to collect unpaid fees. Mary A. Stearns, P.C. v. Williams-Murphy, 263 Ga. App. 239, 587 S.E.2d 247 (2003).

Appellate jurisdiction lies with Court of Appeals. — Court of Appeals, not Supreme Court, has appellate jurisdiction in action to foreclose attorney's statutory lien on land, which raises no question to be determined by a court of equity, or as to title to land, or any other question of which the Supreme Court has jurisdiction under the Constitution of this state. Edwards v. Bynum, 177 Ga. 504, 170 S.E. 367 (1933).

Criminal actions. — There is no statutory or constitutional basis for the award of attorney fees in a criminal action; in fact, sovereign immunity barred a criminal defendant's claim for attorney fees when the charge against the attorney was dismissed on speedy trial grounds. Bennett v. State, 210 Ga. App. 337, 436 S.E.2d 40 (1993).

Violation of bar standard not shown. — Failure of an attorney to deliver papers to the plaintiff did not constitute a violation of former Rule 4-102, Standard 22 of the Standards of Conduct of the State Bar because, under O.C.G.A. § 15-19-14, the attorney was lawfully entitled to retain the papers until the fee was paid. Frame v. Booth, Wade & Campbell, 238 Ga. App. 428, 519 S.E.2d 237 (1999).

Cited in Odom v. Attaway, 173 Ga. 883, 162 S.E.2d 279 (1931); Dyal v. Watson, 174 Ga. 330, 162 S.E. 682 (1932); Arnold v. Citizens' & S. Nat'l Bank, 47 Ga. App. 254, 170 S.E. 316 (1933); Fanning v. Poe, 76 F.2d 707 (5th Cir. 1935); Felker v. Johnson, 189 Ga. 797, 7 S.E.2d 668 (1940); Thomas v. Holt, 209 Ga. 133, 70 S.E.2d 595 (1952); Brooks v. Cash & Thomas Contractors, 137 Ga. App. 176, 223 S.E.2d 225 (1976); Crews v. Seaboard C.L.R.R., 145 Ga. App. 339, 243 S.E.2d 722 (1978); In re Beef N' Burgundy, Inc., 21 Bankr. 69 (Bankr. N.D. Ga. 1982); Steele v. Cincinnati Ins. Co., 171 Ga. App. 499, 320 S.E.2d 203 (1984); Pope v. State, 179 Ga. App. 739, 347 S.E.2d 703 (1986); In re Presto, 263 Ga. 576, 435 S.E.2d 200 (1993); D. Robert Autrey, Jr., P.C. v. Baker, 244 Ga. App. 532, 536 S.E.2d 204 (2000); Gilbert v. Montlick & Assocs., P.C., 248 Ga. App. 535, 546 S.E.2d 895 (2001); Yurevich v. Williams, 302 Ga. App. 162, 690 S.E.2d 476 (2010).

Time When Lien Attaches

Attachment arises upon employment. — Lien given to an attorney arises upon the attorney's employment and is perfected by ultimate recovery of the judgment for the attorney's client. Molloy v. Hubbard, 48 Ga. App. 820, 173 S.E. 877 (1934).

Time of attachment of lien to action and to property. — Lien on property is not perfect until after recovery; but there is a lien on the action which is perfect at once, and the lien on the property is in-

Time When Lien Attaches (Cont'd)

choate. Twiggs v. Chambers, 56 Ga. 279 (1876); Lovett v. Moore, 98 Ga. 158, 26 S.E. 498 (1896); Burgin & Sons Glass Co. v. McIntire, 7 Ga. App. 755, 68 S.E. 490 (1910).

Attachment once action filed. — Upon the filing of an action by an attorney, a lien attaches in the attorney's favor in such action, which the plaintiff and defendant are not at liberty to settle so as to defeat the attorney's claim for fees. Middleton v. Westmoreland, 164 Ga. 324, 138 S.E. 852 (1927).

Inchoate lien on property attaches when action commenced. — In action for property, if the fee of plaintiff's attorney is payable by special contract out of the proceeds of the action, the attorney has an inchoate lien upon the property for the attorney's fee as soon as the action is commenced, and the client has no right to defeat such lien by dismissing the action before trial over the attorney's objection without first paying the fee. Twiggs v. Chambers, 56 Ga. 279 (1876).

Engagement of attorney upon contingent fee. — Mere engagement by prospective suitor of attorney at law upon contingent fee does not give rise to a lien for fees in favor of the latter upon the cause of action for which the attorney is employed. Brown v. Georgia, C. & N. Ry., 101 Ga. 80, 28 S.E. 634 (1897).

Bankruptcy actions. — Georgia attorney's liens under O.C.G.A. § 15-19-14 arise upon the attorney's employment and are perfected by the ultimate recovery of the judgment and if the lien does not arise and is not perfected until after the filing of the bankruptcy petition, the lien does not relate back to a pre-petition date; accordingly, the automatic stay under 11 U.S.C. § 362(a)(4) prevents counsel from obtaining a post-petition lien for post-petition services. In re Chewning & Frey Sec., 328 B.R. 899 (Bankr. N.D. Ga. 2005).

Attorney's fees. — Because the interest in a fee award held by appellee, a law firm's former attorney, existed prior to the law firm's later assignment of its interest to appellant assignee, and the attorney's interest could not have been assigned by the firm as it belonged to the attorney personally, the attorney had an enforceable contractual interest in the attorney's percentage and the attorney was protected by O.C.G.A. § 15-19-14's attorney lien; the attorney had left the firm before the class action was filed, and after the action was filed, the attorney associated the law firm in the class action, and it was not until thereafter that the firm assigned the firm's interest in the fees to the assignee. R.D. Legal Funding Partners, LP v. Robinson, No. 11-12190, 2012 U.S. App. LEXIS 8074 (11th Cir. Apr. 18, 2012) (Unpublished).

Extinguishment of Lien

Duration of lien. — Legislature did not intend for attorney liens on real property created under the statute to be governed by the time restrictions of O.C.G.A. Ch. 14, T. 44. Jones v. Wellon, 237 Ga. App. 62, 514 S.E.2d 880 (1999).

Imposition of an attorney lien on real property, as a separate and distinct remedy governed by O.C.G.A. Ch. 19, T. 15, should not be subject to extinction for failure of the attorney to bring suit to enforce the lien within a specific period of time. Jones v. Wellon, 237 Ga. App. 62, 514 S.E.2d 880 (1999).

Attorney fees, which were protected by a lien against real property, were based on an open account and, therefore, the lien was barred since the attorney did not bring suit against the attorney's former client within the four-year statute of limitation for open accounts. Jones v. Wellon, 237 Ga. App. 62, 514 S.E.2d 880 (1999).

Settlement before bringing of action extinguishes lien. — Since the attorney's lien is only on the action or judgment and not on the cause of action, if there is a settlement before action is brought, there is no lien, and the attorney cannot prosecute the action for the attorney's fees. Winslow Bros. Co. v. Murphy, 139 Ga. 231, 77 S.E. 25 (1913); Georgia Ry. & Elec. Co. v. Crosby, 12 Ga. App. 750, 78 S.E. 612 (1913).

Dismissal of suit. — Attorneys' lien was not extinguished since: (1) the attorneys represented a church in connection with a dispute with the seller of property to the church; (2) the attorneys filed an action for specific performance, and the

seller filed a counterclaim for ejectment; (3) the dispute was settled and the action was dismissed; and (4) the attorneys then sought to recover additional fees from the church by seeking to foreclose a lien on the property recovered in the settlement of the earlier action. Smith v. Word of God Ministries, Inc., 234 Ga. App. 263, 506 S.E.2d 427 (1998).

Attorney's lien on real property recovered by means of a settlement agreement successfully procured through the attorney's labor pursuant to O.C.G.A. § 15-19-14(c) was not extinguished by the dismissal of the action brought to recover that real property. Carragher v. Potts, 300 Ga. App. 735, 686 S.E.2d 348 (2009).

Lien after filing cannot be settled without attorney's consent. — Attorney for defendant has a lien upon the defendant's interest in a pending action which cannot be defeated by any settlement, made without defendant's consent, after the action is brought. Payton v. Wheeler, 13 Ga. App. 326, 79 S.E. 81 (1913).

Cause of action can be settled by the parties before action is brought, but after the action has been brought, the action and cause of action become one in substance, and neither the action nor the cause of action thereafter can be settled so as to defeat the lien of the attorney. Georgia Ry. & Elec. Co. v. Crosby, 12 Ga. App. 750, 78 S.E. 612 (1913); Pharr v. McDonald, 180 Ga. 777, 180 S.E. 844 (1935); Bennett v. Cannon, 114 Ga. App. 479, 151 S.E.2d 828 (1966).

Lien extinguished by settlement between parties. — If, pending the action, the plaintiff and defendant compromise and settle their differences, and upon the trial the action is dismissed, the action thus commenced is thereby ended and the attorney's lien is extinguished. Brown v. Georgia, C. & N. Ry., 101 Ga. 80, 28 S.E. 634 (1897).

If for any reason the action is finally disposed of by operation of law, or by a ruling of the court thereon, the lien of the attorney is necessarily discharged. Georgia Ry. & Elec. Co. v. Crosby, 12 Ga. App. 750, 78 S.E. 612 (1913).

Recovery by Attorney

Recovery on behalf of attorney dependent on valid cause of action. — There can be no recovery on behalf of the attorney, unless the evidence is of such a character as would have authorized a recovery by the client if the action were still proceeding for the client's benefit. Atlanta Ry. & Power Co. v. Owens, 119 Ga. 833, 47 S.E. 213 (1904).

Attorney may waive lien or submit to discharge. — Attorney is not obliged to insist upon the attorney's lien or the attorney's right to collect the judgment or execution; the attorney may waive the lien or submit to a discharge. Roland v. Roland, 139 Ga. 825, 78 S.E. 249 (1913).

Successful defense constitutes recovery by attorney. — Attorney who successfully resists a mechanic's lien is entitled to a lien under this section. Fry v. Calder, 74 Ga. 7 (1884).

Attorney at law who successfully defends an action for the recovery of property, real or personal, recovers the property. Lovett v. Moore, 98 Ga. 158, 26 S.E. 498 (1896).

Lien of attorney attaches to real or personal property for the rendition of services in successfully defending the client's title thereto as against an adverse claim. Prudential Ins. Co. of Am. v. Byrd, 188 Ga. 527, 4 S.E.2d 175 (1939).

Prosecution by attorney in event of settlement. — Settlement made directly with plaintiff will leave defendant liable to recovery for benefit of attorney to the extent of the attorney's fees. Little v. Sexton, 89 Ga. 411, 15 S.E. 490 (1892); Camp v. United States Fid. & Guar. Co., 42 Ga. App. 653, 157 S.E. 209 (1931).

If an action is brought by an attorney at law for the attorney's clients as payees, against the maker of a promissory note, for principal, interest, attorney's fees, and certain equitable relief, and before the trial of the case the parties settle the case among themselves, without the knowledge or consent of the plaintiffs' attorney, who is not paid the attorney's fees, the attorney may prosecute the original action for the purpose of recovering the attor-

Recovery by Attorney (Cont'd)

ney's fees. Glennville Inv. Co. v. Jordan & Rogers, 144 Ga. 14, 85 S.E. 1049 (1915).

Attorney is given express statutory right to prosecute action in the event of settlement between the plaintiff and the defendant. Travelers Ins. Co. v. Bagwell, 116 Ga. App. 675, 158 S.E.2d 267 (1967).

Contingency did not occur. — In a claim for attorney's fees, the contingency set forth in the retainer agreement, a final recovery, had not occurred when the attorney was terminated by the client; however, as the client prevented the contingency from happening, the attorney might be entitled to a fee under quantum meruit principles. Lewis v. Smith, 274 Ga. App. 528, 618 S.E.2d 32 (2005).

Settlement bars plaintiff's recovery unless defendant notified. — Lien provided in this section does not arise, as against the defendant, until there has been either service of process or actual notice of the filing of the petition; it follows, therefore, that if a settlement is had between plaintiff and defendant, and the latter is ignorant that the petition has been filed at the time of the settlement, such settlement would be a bar to a recovery by plaintiff of fees due by plaintiff under a contract with plaintiff's attorneys. Florida C. & P.R.R. v. Ragan, 104 Ga. 353, 30 S.E. 745 (1898); Lumpkin v. Louisville & N.R.R., 136 Ga. 135, 70 S.E. 1101 (1911).

Law firm not entitled to intervene in former client's case. — Trial court did not abuse the court's discretion in denying a law firm's motion under O.C.G.A. § 9-11-24(a)(2) to intervene in a former client's case because the firm was discharged from the case and filed the firm's lien pursuant to O.C.G.A. § 15-19-14(b) before the settlement, and the firm knew when the client had reached a settlement agreement but did not move to intervene as a party until over a month later; the firm was allowed to prosecute the firm's fee lien to the jury as a party, making opening statements, calling witnesses, introducing evidence, and arguing in closing. Jones, Martin, Parriz & Tessener Law Offices, PLLC v. Westrex Corp., 310 Ga. App. 192, 712 S.E.2d 603 (2011).

Attorney having lien may intervene in a pending action to enforce a settlement. — Attorney who has a lien upon a cause of action being asserted for payment of compensation contracted to be paid for such services has an interest in the litigation and may intervene in the pending action. Gilbert v. Johnson, 601 F.2d 761 (5th Cir. 1979), cert. denied, 445 U.S. 961, 100 S. Ct. 1647, 64 L. Ed. 2d 236 (1980).

Although a former attorney lacked standing to file a contempt motion after the attorney formally withdrew from representing a client, the filings of the attorney to enforce a settlement were construed as papers filed to protect a colorable notice of attorneys' lien pursuant to O.C.G.A. § 15-19-14 for fees and costs owed based on a written fee contract. Young v. JCB Mfg., No. 407CV043, 2008 U.S. Dist. LEXIS 74108 (S.D. Ga. Aug. 25, 2008).

Attorney estopped from asserting lien. — If attorney directs that judgment be entered in favor of garnishor of the attorney's client in action against a debtor, the attorney is estopped from asserting a lien against the debtor who has paid the judgment. Watters v. Wells, 7 Ga. App. 778, 68 S.E. 450 (1910).

Former spouse's action to remove an attorney's lien against marital property under O.C.G.A. § 15-19-14 was barred by collateral estoppel under O.C.G.A. § 9-12-40. The issue of the lien had been fully litigated and decided in a divorce action on the merits between the same parties or their privies, and for purposes of recovering on the lien, the attorney was the other spouse's privy. Ruth v. Herrmann, 291 Ga. App. 399, 662 S.E.2d 726 (2008).

Because an attorney only represented a client in a custody dispute, and because the client ultimately surrendered the client's half interest in the property at issue in settlement of that dispute, the attorney was not entitled to a lien on the property under O.C.G.A. § 15-19-14(c). Outlaw v. Rye, 312 Ga. App. 579, 718 S.E.2d 905 (2011), cert. denied, 2012 Ga. LEXIS 312 (Ga. 2012).

Client contract contemplating settlement. — If contract between an attor-

ney and client contemplates a settlement, the attorney impliedly consents to the settlement and cannot enforce the attorney's lien against the opposing party. Gower v. Roberts, 32 Ga. App. 164, 122 S.E. 796, cert. denied, 32 Ga. App. 807 (1924).

Effect of post-judgment settlement on contingent fee. — Contingent fee contract was fully performed when judgment was entered and the amount of attorney fees due was correctly based on the amount of the judgment; thus, an attorney had no right under the contract or O.C.G.A. § 15-19-14 to have the attorney's fee calculated on a post-judgment settlement negotiated by a successor attorney. Peoples v. Consolidated Freightways, Inc., 226 Ga. App. 265, 486 S.E.2d 604 (1997).

Possession of funds by attorney. — If the client failed to establish that the client's attorney had constructive possession of funds at the time of the client's demand that the attorney withdraw the attorney's lien, the trial court erred in holding the attorney to the ten-day limit on foreclosure under O.C.G.A. § 44-14-550(1). Autrey v. Baker, 228 Ga. App. 396, 492 S.E.2d 261 (1997).

Even though an attorney withdrew from representation prior to the final settlement in a divorce action, liens for attorney fees asserted against property recovered by the client pursuant to the judgment were not unlawful. Lipton v. Warner, Mayoue & Bates, 228 Ga. App. 516, 492 S.E.2d 281 (1997).

Attorneys employed as special counsel in bankruptcy cases. — Attorneys who represented an asphalt company in a lawsuit the company filed before the company was forced into bankruptcy did not have a charging lien under O.C.G.A. § 15-19-14(b) on the proceeds of a settlement the attorneys negotiated after the attorneys were appointed as special counsel for the company's bankruptcy estate because the attorneys represented the estate, not the company, and the attorneys were not entitled to receive 35 percent of the settlement proceeds because the Chapter 7 trustee had rejected the attorneys' proposal for a contingency fee contract, pursuant to 11 U.S.C. § 365. Because the court had not determined a method for paying the attorneys for work the attorneys performed as special counsel, the court held that the amount of fees would be determined under 11 U.S.C. § 330 and the award would be given administrative priority under 11 U.S.C. §§ 503 and 507. Cardwell v. Bankruptcy Estate of Joel Spivey (In re Douglas Asphalt Co.), 483 B.R. 560 (Bankr. S.D. Ga. 2012).

Charging lien by law firm limited to work from which judgment obtained. — When plaintiff law firms engaged in a number of legal matters for a debtor, one of which resulted in the creation of a settlement fund, the law firms' charging lien pursuant to O.C.G.A. § 15-19-14(b) was limited to the expenses and fees that generated the fund, and did not extend to the plaintiffs' expenses and fees generated in other lawsuits; the statute did not provide guidance on the issue, and the enactment of the statute did not render Georgia's prior case law on the subject irrelevant. Savage, Turner, Pinson, & Karsman v. Fid. & Deposit Co. (In re Douglas Asphalt Co.), No. 512-019, 2013 U.S. Dist. LEXIS 40820 (S.D. Ga. Mar. 22, 2013).

Ambiguous fee agreements. — Plain language of a fee agreement which an attorney concluded with clients did not show that the clients agreed to give the attorney part of land the clients owned as compensation for services the attorney rendered in defending the clients' title, and the trial court erred by awarding the attorney title to part of the clients' land. Hornsby v. Hunter, 262 Ga. App. 598, 585 S.E.2d 900 (2003).

Evidence not relevant to attorney's lien. — Trial court did not abuse the court's discretion in excluding evidence of how much a former client or the client's experts thought the client's claim against a city was worth or the amount of the client's settlement with the city because the trial court concluded that neither the size of the claim nor the outcome of the case were relevant to the law firm's attorney lien under O.C.G.A. § 15-19-14(b) because the reasonable fee for the contract work the firm performed did not vary with the value of the case; the contingency fee

Recovery by Attorney (Cont'd)

contract specified that the firm was entitled to reasonable fees for work performed up to the date of discharge, and the trial court admitted only evidence of the results the firm obtained before the client discharged the firm. Jones, Martin, Parriz & Tessener Law Offices, PLLC v. Westrex Corp., 310 Ga. App. 192, 712 S.E.2d 603 (2011).

Motion to enforce lien for attorney's fees timely. — Trial court did not err in granting an attorney's motion to vacate the dismissal of a client's medical malpractice suit and to foreclose the attorney's lien for attorney fees under O.C.G.A. § 15-19-14(b) because the attorney's motion to enforce the lien was timely under the four-year statute of limitations applicable to open accounts, O.C.G.A. § 9-3-25, since the motion was filed within the same year the attorney's right of action accrued; the statute of limitation did not begin to run until the client settled the client's lawsuit on February 6, 2008, the attorney filed the attorney's notice of attorney's lien the day after the client executed the settlement release, and when the client filed a dismissal of the lawsuit without satisfying the lien the attorney filed the attorney's motion to vacate the dismissal and to enforce the attorney's lien on September 10, 2008, and thus was timely. Woods v. Jones, 305 Ga. App. 349, 699 S.E.2d 567 (2010).

Declaratory judgment not available. — Under the right-for-any-reason rule, the trial court did not err by dismissing a law firm's case against an insurer under the Declaratory Judgment Act, O.C.G.A. § 9-4-1, and O.C.G.A. § 15-19-14(b) to enforce the firm's attorney's lien in a case the firm filed on behalf of an owner against the insurer because declaratory judgment was not available; the issues the firm raised were the same as those raised in an owner's case against the insurer for failure to provide a defense, and the rights of the parties in the owner's case had already accrued. McRae, Stegall, Peek, Harman, Smith & Manning, LLP v. Ga. Farm Bureau Mut. Ins. Co., 316 Ga. App. 526, 729 S.E.2d 649 (2012).

Practice and Procedure

Determination of amount of fee. — Trial court did not err in refusing to calculate the amount of attorney fees pursuant to a contingent fee contract since the court found that the payment of insurance proceeds was not entirely the result of the attorney's exertions on behalf of the client or the fruit of the attorney's labor and skill in prosecuting the cause of action. Holland v. State Farm Mut. Auto. Ins. Co., 244 Ga. App. 583, 536 S.E.2d 270 (2000).

Filing unnecessary to validity of lien as to client. — Filing is not essential to the validity of the lien as between the attorney and the client, or as between the attorney and other existing creditors of the latter. Coleman v. Austin, 99 Ga. 629, 27 S.E. 763 (1896); Burgin & Sons Glass Co. v. McIntire, 7 Ga. App. 755, 68 S.E. 490 (1910).

Between the attorney and other existing creditors of the client, it is not essential to the validity of the lien that the lien should be filed, or recorded, or enforced by foreclosure. Molloy v. Hubbard, 48 Ga. App. 820, 173 S.E. 877 (1934).

Effect of attorney's failure to record lien. — Attorney is given the privilege of protecting the attorney's lien by recording the attorney's claim thereto, and the attorney's failure to avail oneself of such privilege brings upon the attorney the same disaster that befalls other lienholders who neglect to record the lien as authorized by law. Johnson v. Giraud, 191 Ga. 577, 13 S.E.2d 365 (1941).

Purpose of the recording statutes is to protect both the lienholder and innocent persons acting in good faith but without means of discovering the lien of another. An attorney is given the privilege of protecting the attorney's lien by recording the attorney's claim thereto, and the attorney's failure to avail oneself of such privilege brings upon the attorney the same disaster that befalls other lienholders who neglect to record the lien as authorized by law. Anderson v. Burnham, 12 Bankr. 286 (Bankr. N.D. Ga. 1981).

Only notice necessary to defendant is knowledge of institution of action. — Only notice necessary to a defendant in a pending action of the lien of the plaintiff's attorney on the action and the ac-

tion's proceeds for the attorney's fees in that case is knowledge of the fact that the action has been instituted and is pending. Little v. Sexton, 89 Ga. 411, 15 S.E. 490 (1892); Camp v. United States Fid. & Guar. Co., 42 Ga. App. 653, 157 S.E. 209 (1931).

Notice does not impute liability. — Notice to the opposing party before action is brought will not make the opposing party liable for the attorney's fees. Winslow Bros. Co. v. Murphy, 139 Ga. 231, 77 S.E. 25 (1913).

Notice of land lien to vendee pendente lite unnecessary. — After attorneys file a bill to enforce the attorneys' lien on realty, one who purchases the land does so with notice. Wilson v. Wright, 72 Ga. 848 (1884).

After recovery of land sued for, plaintiff's attorneys may foreclose their liens and it is not necessary that a vendee pendente lite should have been given notice of such liens, the pendency of the action in ejectment constituting such notice. Suwannee Turpentine Co. v. Baxter, 109 Ga. 597, 35 S.E. 142 (1900).

If at the time a purchaser purchased property, an attorney's lien was properly filed and recorded, the property transferred was subject to the attorney's lien and the purchaser was not a "bona fide purchaser without notice". Hester v. Chalker, 222 Ga. App. 783, 476 S.E.2d 79 (1996).

Petition sufficient for cause of action. — Petition by attorney states a cause of action if the petition alleges that the attorney's co-counsel and the attorney's clients conspired with the intent to deprive petitioner of compensation and the petitioner's right to exercise the petitioner's holding lien. Davidson v. Collier, 104 Ga. App. 546, 122 S.E.2d 465 (1961).

Petition sufficient to fully state cause of action. — When petition for foreclosure of attorney's lien and lien itself, made part of petition, fully set forth nature of cause and of litigation in which legal services were rendered on implied contract or quantum meruit, it is unnecessary to state specific charge for each item of services. York v. Edwards, 52 Ga. App. 388, 183 S.E. 339 (1936).

Maintaining viability of lien. — Lien of attorney is kept alive if original open account is within four years converted into a note under seal, and the lien may be foreclosed at any time before action on the note has become barred by the statute of limitations. Johnson v. Giraud, 191 Ga. 577, 13 S.E.2d 365 (1941).

Attorney has statutory right to retain former client's files. — Attorney's refusal to release file material to a former client prior to settlement of a fee dispute cannot constitute duress sufficient to permit the former client to avoid the obligations pursuant to a promissory note, the execution of which is made a prerequisite for the return of the file material, since the attorney has a statutory right to retain the former client's file materials in the attorney's possession until the attorney's fee claim is satisfied or the attorney is otherwise directed by court order. Crockett v. Shafer, 166 Ga. App. 453, 304 S.E.2d 405 (1983).

Action by counsel against co-counsel. — Action for damages by one counsel will lie against one's co-counsel for failure to protect one's retaining or holding lien on funds in the hands of the defendant after notice of the lien claim has been given; when the defendant co-counsel releases the funds to the client to plaintiff's detriment, it follows that plaintiff is entitled to such damages as will make plaintiff whole. Davidson v. Collier, 104 Ga. App. 546, 122 S.E.2d 465 (1961).

Attorney may file second petition if client tried to dismiss the attorney. — When attorney is employed to bring action for accounting for the attorney's client (there being no agreement fixing the amount of fees), does so, and obtains a decree requiring defendant to account, when such defendant fails to do so, the filing of another petition in the same case to bring about an accounting, based on the original decree, is not a new action, and the attorney has a right to proceed with the whole case, despite the fact that the client made an effort to dismiss the attorney before the second petition for accounting was filed, especially since the dismissal is for the sole reason that the client does not wish to incur further expense. Aiken v. White, 69 Ga. App. 717, 26 S.E.2d 471, rev'd on other grounds, 197 Ga. 29, 28 S.E.2d 263 (1943).

Practice and Procedure (Cont'd)

Plaintiff's power to dismiss subject to counsel's objection. — Plaintiff in error cannot withdraw a writ of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50) over the objection of plaintiff's counsel, when it appears that the litigation is such that it would, if successful, result in a recovery of property on which counsel would have a lien for fees earned in the case. Walker v. Equitable Mtg. Co., 114 Ga. 862, 40 S.E. 1010 (1902).

Liens on funds impounded for distribution. — Fund impounded for distribution may be subjected to lien of attorney who recovered the fund. Stewart v. McDonald, 147 Ga. 158, 93 S.E. 86 (1917).

If a fund recovered by an attorney on behalf of a client is in the hands of a court of equity, the court may, on motion of the defendant's attorney and with defendant's consent, impress a lien of defendant's attorney on the funds to which defendant is entitled. Prudential Ins. Co. of Am. v. Byrd, 188 Ga. 527, 4 S.E.2d 175 (1939).

Surety's interest takes precedence over subsequent attorney's lien. — Surety's interest in contract proceeds which had been assigned to the surety by the contractor took priority over a subsequently filed attorney's lien asserted by the contractor's attorney. Buckeye Cellulose Corp. v. Sutton Constr. Co., 907 F.2d 1090 (11th Cir. 1990).

Attorney's lien on fund in escrow superior. — If a fund held in escrow was the result of fruits of labor and skill of an attorney at law, the attorney's lien as an attorney attached thereto and was superior to the liens of two other lienholders, who held bills of sale to the insured property destroyed by fire from which the insurance fund in escrow was derived. John J. Woodside Co. v. Irwin, 79 Ga. App. 252, 53 S.E.2d 246 (1949).

Attorney's lien enforceable against portion of property. — Attorney's lien may, as against the liens of other creditors, be enforced against a portion of the property covered thereby and satisfied out of its proceeds, although attorney has permitted other portions of such property to be sold. Coleman v. Austin, 99 Ga. 629, 27 S.E. 763 (1896).

Attorney's lien attached to land purchased by client on judgment of foreclosure. — If attorney at law, under employment, obtained judgment of foreclosure and caused execution to be issued and levied on land, which was sold, the attorney's client becoming the purchaser and taking the title, no money being paid but the price of the land being entered as a credit upon the execution, the lien of the attorney for the attorney's fee attached to the land and could be foreclosed thereon. Wooten v. Denmark, 85 Ga. 578, 11 S.E. 861 (1890).

Proceeding to foreclose attorney's lien brought as foreclosure. — Proceeding to foreclose attorney's lien upon real property is to be brought in the same manner as a proceeding to foreclose a mortgage upon land; the process is a rule nisi issued by the court, and not a process issued by the clerk as in ordinary cases. York v. Edwards, 52 Ga. App. 388, 183 S.E. 339 (1936).

Priority of attorney's lien. — Lien of the patient's attorney on the settlement proceeds of personal injury action had priority over the hospital's claims for medical expenses incurred in treating the patient as a result of the accident. Ramsey v. Sumner, 211 Ga. App. 202, 438 S.E.2d 676 (1993).

Lien improperly held invalid. — As an attorney's lien under O.C.G.A. § 15-19-14 for services rendered to a decedent's child with respect to securing the child's share of the estate was valid and there was no dispute as to the amount due to the attorney, the child was not entitled to direct distribution of the child's share of the estate until the attorney's lien or claim for fees was fully satisfied. In re Estate of Estes, 317 Ga. App. 241, 731 S.E.2d 73 (2012).

Proper procedures. — Lawyer followed the proper procedure to enforce the lawyer's attorney's lien under O.C.G.A. § 15-19-14(b) by moving to vacate the dismissal of the underlying suit and reinstate the original action to prosecute the lien; the trial court acted within the court's authority in vacating the dismissal of the underlying action to allow the lawyer to prosecute the lien. Howe & Assocs., P.C. v. Daniels, 280 Ga. 803, 631 S.E.2d 356 (2006).

Lien of the mortgagee is superior to the lien of the mortgagor's attorney. Leiden v. GMAC, 136 Ga. App. 268, 220 S.E.2d 716 (1975).

Use of restraining order to prevent sale of land. — Attorney is not entitled to lien upon land for obtaining restraining order to prevent sale thereof when such order was subsequently dissolved, though the delay enabled the client to arrange to prevent the sale. Hodnett v. Bonner, 107 Ga. 452, 33 S.E. 416 (1899).

Lien upon land as security for note reduced to judgment. — When note is reduced to judgment in the amount of principal and interest and the attorney's fees, and the judgment is declared a special lien upon certain land which is security for the payment of the note, and although an attorney may have a lien upon certain land as security for the attorney's fee even after the land has been sold under the execution and has been brought in at the sale by the payee of the note as plaintiff for an amount less than the principal represented in the judgment, the attorney's lien upon the land is only to the extent of 10 percent of the proceeds from the sale of the land. Stegall v. Edwards, 51 Ga. App. 738, 181 S.E. 502 (1935).

Attorney has no lien if homestead application withdrawn or dismissed. — Attorney prosecuting an application to set apart a homestead of realty has no lien on the property if the application is withdrawn or dismissed, nor can the attorney prosecute it further. Haygood v. Dannenberg Co., 102 Ga. 24, 29 S.E. 293 (1897).

Collecting debt due attorney by garnishment. — Debt due by attorney cannot be collected by process of garnishment served upon debtor of one of the attorney's clients, although the attorney may, as a result of the attorney's services, have a contingent interest in the debt to the client. Modlin v. Smith, 13 Ga. App. 259, 79 S.E. 82 (1913).

Attorney's lien entitled to satisfaction prior to garnishing creditor's. — Attorney, having foreclosed chattel mortgage and lodged the fieri facias with the sheriff, and having brought a petition for a rule against the sheriff for the mortgagee, asking to have the funds derived from the sale of the mortgaged property turned over to the client, the mortgagee, prior to the institution of the garnishment proceedings by the creditor of the mortgagee, who held a common-law fieri facias against the mortgagee, was entitled to have the attorney's lien for services performed in the foreclosure of the chattel mortgage, satisfied prior to turning the proceeds of the sale over to the garnishing creditor. Molloy v. Hubbard, 48 Ga. App. 820, 173 S.E. 877 (1934).

Lien on action for accounting. — Attorney employed to bring action for accounting has lien on action and inchoate lien on the sums recovered, if any, for whatever fee the attorney is eventually entitled to; there is no rule of law in this state confining such right on the part of an attorney to cases involving contingent fees. Aiken v. White, 69 Ga. App. 717, 26 S.E.2d 471, rev'd on other grounds, 197 Ga. 29, 28 S.E.2d 263 (1943).

Attorneys have lien on awards of State Board of Workers' Compensation; such lien need not be recorded, and the only notice necessary is that the employer and the insurance carrier have notice of the attorney's relation to the proceeding. Dunagan v. Marell Farms, Inc., 95 Ga. App. 857, 99 S.E.2d 236 (1957).

State Board of Workers' Compensation is without authority to enforce an attorney's lien, and an award directing the employer, as the result of the employer having settled with the claimant without consulting an attorney, to pay attorney's fees directly to the claimant's attorney is contrary to law and unenforceable. Dunagan v. Marell Farms, Inc., 95 Ga. App. 857, 99 S.E.2d 236 (1957).

Lien on awards of industrial commissions. — Lien of attorney at law representing claimant attaches to a proceeding in an industrial commission brought for the purpose of obtaining an award of compensation, and, when an award of compensation is entered in favor of the claimant, the employer and the employer's insurance carrier, having notice of the attorney's relation to the proceeding, are not at liberty to satisfy the award until the lien or claim of the attorney for the

Practice and Procedure (Cont'd)

attorney's fee is fully satisfied, and, if they do so, they are liable in the action to a recovery for the benefit of the attorney to the extent of the attorney's fees, and the attorney may prosecute the proceeding in the manner pointed out by seeking, in the superior court, a judgment upon the award entered in favor of the client, to the extent of the attorney's fees. Dunagan v. Marell Farms, Inc., 95 Ga. App. 857, 99 S.E.2d 236 (1957).

Materialman's lien statute not applicable. — O.C.G.A. § 44-14-361.1, requiring the filing of an action to enforce a materialman's lien within 12 months, did not apply to the enforcement of an attorney's lien. Hester v. Chalker, 222 Ga. App. 783, 476 S.E.2d 79 (1996).

Breach of promise after marriage. — In an action for breach of promise to marry, after marriage of the plaintiff and the defendant, counsel for the plaintiff cannot prosecute the action for fees. Harris v. Tisom, 63 Ga. 629, 36 Am. R. 126 (1879).

Judgment creditor cannot defend against lien to give indulgence. — Judgment creditor cannot defend against a levy to enforce an attorney's lien on the ground that the judgment creditor had agreed, for value, to give indulgence. Tarver v. Tarver, 53 Ga. 43 (1874).

No statutory right to jury trial in action to enforce attorney's lien. — Trial court's entry of judgment in favor of an attorney in the amount claimed under the attorney's lien for attorney fees did not deny a client the right to a jury trial as to the amount of the attorney fees due because O.C.G.A. § 15-19-14 did not provide the statutory right to a jury trial in actions to enforce an attorney's lien, and the award was a matter for the trial court to decide. Woods v. Jones, 305 Ga. App. 349, 699 S.E.2d 567 (2010).

Attorney fees awarded were reasonable. — Trial court did not err in denying a law firm's motion for new trial after the court awarded the firm fees under a contingency fee contract because the jury found that the reasonable fee for the work the firm performed for a former client before the firm was discharged was $20,750; the city called as witnesses the attorney who represented the city in the client's lawsuit against the city, the firm's managing partner, and the firm's remaining partner, and the client called no witnesses and introduced no evidence but argued that the firm's own evidence presented at the trial showed the firm had performed 90 to 180 hours of work on the case, and suggested that a fee of 100 hours times $200 per hour was a reasonable fee under the contract. Jones, Martin, Parriz & Tessener Law Offices, PLLC v. Westrex Corp., 310 Ga. App. 192, 712 S.E.2d 603 (2011).

ADVISORY OPINIONS OF THE STATE BAR

Withholding of client's papers or properties. — Attorney's ethical obligation not to cause prejudice to his or her client is paramount over rights under O.C.G.A. § 15-19-14. An attorney, therefore, may not to the prejudice of a client withhold the client's papers or properties upon withdrawal as security for unpaid fees. Adv. Op. No. 87-5 (Sept. 27, 1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 310 et seq.

Am. Jur. Proof of Facts. — Reasonableness of Contingent Fee in Personal Injury Actions, 30 POF2d 197.

C.J.S. — 7A C.J.S., Attorney and Client, §§ 207, 221, 230 et seq., 357 et seq.

ALR. — Lien of attorney on public fund or property, 2 ALR 274; 24 ALR 933.

Agreement for contingent fee as assignment of interest in judgment, 2 ALR 454; 19 ALR 399.

Attorney's lien on property purchased by client on sale under a judgment pro-

cured by attorney, 2 ALR 483.

Attorney's lien on papers or securities that come into his possession otherwise than in his professional capacity, 2 ALR 1488.

Substitution by court of security for attorneys' lien, 33 ALR 1296.

Attorneys' lien as subject to set-off against judgment, 34 ALR 323; 51 ALR 1268.

Attorney's lien on decedent's estate, 50 ALR 657.

Right of attorney to have case continued to protect his compensation, 67 ALR 442.

Validity of statutory provision for attorneys' fees, 90 ALR 530.

Attorney's lien on property recovered for his client, 93 ALR 667.

Affirmative duty of defendant to protect lien of plaintiff's attorney, 94 ALR 695.

Right of attorney rendering service to personal representative or testamentary trustee to equitable substitution or subrogation to the latter's right against the estate in respect of such services, 100 ALR 72.

Allowance of attorney's fee against property or fund increased or protected by attorney's services, 107 ALR 749.

Means of enforcing or making effective attorney's retaining lien, 111 ALR 487.

Payment into court or to clerk of court as affecting rights, liability, and procedure in respect of lien of judgment creditor's attorney, 117 ALR 983.

Statute relating to attorney's lien as affecting common-law or equitable lien, 120 ALR 1243.

Attorneys' fees or other expenses incident to proceeding for judicial determination of restoration of sanity or capacity of one previously adjudged to be insane or incompetent as a charge against his estate, 121 ALR 1501.

Constitutionality of statute which by express terms or construction declares that attorneys' liens shall not be affected by settlement or compromise between the parties, 122 ALR 974.

Attorney's contract for contingent fee as amounting to an equitable assignment of interest in cause of action, or proceeds of settlement thereof, 124 ALR 1508.

Priority of lien of sales or consumers' tax, 136 ALR 1015.

Terms of attorney's contingent-fee contract as creating an equitable lien in his favor, 143 ALR 204.

Merits of client's cause of action or counterclaim as affecting attorney's lien or claim for his compensation against adverse party, in case of compromise without attorney's consent, 146 ALR 67.

Right of attorney to set off claim for unrelated services against client's claim for money collected, 173 ALR 429.

Attorney's right to lien or equitable assignment in respect of client's share or interest in decedent's estate, or in trust, 175 ALR 1132.

Rights and remedies of client as regards papers and documents on which attorney has retaining lien, 3 ALR2d 148.

Conflict of laws as to attorneys' liens, 59 ALR2d 564.

What constitutes acceptance or ratification of, or acquiescence in, services rendered by attorney so as to raise implied promise to pay reasonable value thereof, 78 ALR2d 318.

Sufficiency of notice to opposing party (or of serving or filing thereof) required to establish attorney's lien upon client's claim or cause of action, 85 ALR2d 859.

Attorney's charging lien upon continuing payments to which client becomes entitled as result of litigation, 99 ALR2d 451.

Right of attorney for holder of property insurance to fee out of insurer's share of recovery from tortfeasor, 2 ALR3d 1441.

Funds in hands of his attorney as subject of attachment or garnishment by client's creditor, 35 ALR3d 1094.

Amount of attorneys' compensation in absence of contract or statute fixing amount, 57 ALR3d 475.

Amount of attorneys' compensation in matters involving guardianship and trusts, 57 ALR3d 550.

Amount of attorneys' fees in tort actions, 57 ALR3d 584; 86 ALR Fed. 866.

Attorneys at law: fee collection practices as ground for disciplinary action, 91 ALR3d 583.

Attorney's failure to report promptly receipt of money or property belonging to client as ground for disciplinary action, 91 ALR3d 975.

Limitation to quantum meruit recovery,

where attorney employed under contingent fee contract is discharged without cause, 92 ALR3d 690.

Attorney's charging lien as including services rendered or disbursements made in other than instant action or proceeding, 23 ALR4th 336.

Attorney's retaining lien as affected by action to collect legal fees, 45 ALR4th 198.

Attorney's assertion of retaining lien as violation of ethical code or rules governing professional conduct, 69 ALR4th 974.

What items of client's property or funds are not subject to lien, 70 ALR4th 827.

Priority between attorney's charging lien against judgment and opposing party's right of setoff against same judgment, 27 ALR5th 764.

Alimony or child-support awards as subject to attorneys' liens, 49 ALR5th 595.

Circumstances under which attorney retains right to compensation notwithstanding voluntary withdrawal from case, 53 ALR5th 287.

15-19-15. Satisfaction of liens.

Liens of attorneys at law in possession of personal property under a lien for fees shall be satisfied according to Code Section 44-14-550. (Ga. L. 1873, p. 42, § 17; Code 1873, § 1992; Ga. L. 1880-81, p. 63, § 4; Code 1882, § 1992; Civil Code 1895, § 2818; Civil Code 1910, § 3368; Code 1933, § 9-614.)

JUDICIAL DECISIONS

Forfeiture of lien. — If, as a result of plaintiffs' assertion of an attorneys' fee lien, plaintiffs came into possession of several checks made jointly payable to plaintiffs and defendant and, notwithstanding defendant's written demand for those checks, plaintiffs retained possession of those checks and subsequent ones, not instituting foreclosure proceedings within ten days of holding personal property belonging to the defendant, plaintiffs failed to comply with the explicit terms of O.C.G.A. § 15-19-15; thus, forfeiture and cancellation of the lien was proper. Ellis, Funk, Goldberg, Labovitz & Dockson v. Kleinberger, 235 Ga. App. 360, 509 S.E.2d 660 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 333 et seq.

C.J.S. — 7A C.J.S., Attorney and Client, § 221.

ALR. — Attorney's lien on papers or securities that come into his possession otherwise than in his professional capacity, 2 ALR 1488.

Substitution by court of security for attorneys' lien, 33 ALR 1296.

Attorneys' lien as subject to set-off against judgment, 34 ALR 323; 51 ALR 1268.

Right of attorney rendering service to personal representative or testamentary trustee to equitable substitution or subrogation to the latter's right against the estate in respect of such services, 100 ALR 72.

Means of enforcing or making effective attorney's retaining lien, 111 ALR 487.

Statute relating to attorney's lien as affecting common law or equitable lien, 120 ALR 1243.

Constitutionality of statute which by express terms or construction declares that attorneys' liens shall not be affected by settlement or compromise between the parties, 122 ALR 974.

Terms of attorney's contingent-fee contract as creating an equitable lien in his favor, 143 ALR 204.

Funds in hands of his attorney as subject of attachment or garnishment by client's creditor, 35 ALR3d 1094.

Amount of attorneys' compensation in absence of contract or statute fixing amount, 57 ALR3d 475.

Amount of attorneys' compensation in matters involving guardianship and trusts, 57 ALR3d 550.

Amount of attorneys' fees in tort actions, 57 ALR3d 584; 86 ALR Fed. 866.

Limitation to quantum meruit recovery, where attorney employed under contingent fee contract is discharged without cause, 92 ALR3d 690.

Attorney's retaining lien as affected by action to collect legal fees, 45 ALR4th 198.

Calculations of attorneys' fees under Federal Tort Claims Act--28 USCS sec. 2678, 86 ALR Fed. 866.

15-19-16. Liability of attorneys.

Where attorneys retain in their hands the money of their clients after it has been demanded, they are liable to rule and otherwise as sheriffs are and incur the same penalties and consequences. (Laws 1822, Cobb's 1851 Digest, p. 578; Code 1863, § 381; Code 1868, § 442; Code 1873, § 407; Code 1882, § 407; Civil Code 1895, § 4416; Civil Code 1910, § 4954; Code 1933, § 9-617.)

JUDICIAL DECISIONS

Penalty collectible from attorney by action other than rule. — Right of the client to the 20 percent penalty for withholding money collected after written demand does not necessarily depend on the client proceeding against the attorney under the money rule summary proceeding. Nations v. Winter, 165 Ga. App. 890, 303 S.E.2d 64 (1983).

Rule will not lie. — Otherwise summary remedy of a rule nisi is not available in an action to collect funds allegedly withheld by an attorney if the attorney answers the complaint in writing and effectively denies the complaint's allegations. West v. Haupt, 163 Ga. App. 907, 296 S.E.2d 723 (1982).

This section is penal in nature and must be strictly construed. Lancaster v. Brandt, 64 Ga. App. 429, 13 S.E.2d 516 (1941); Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943).

Relationship of attorney and client must exist. Haygood v. Haden, 119 Ga. 463, 46 S.E. 625 (1904); Knight v. Rogers, 22 Ga. App. 308, 95 S.E. 997 (1918).

Attorney who receives money merely as agent of another to be remitted to third person cannot be ruled upon. Haygood v. McKenzie, 119 Ga. 466, 46 S.E. 624 (1904).

Attorney who collects money on execution subsequently purchased by petitioner cannot be ruled upon. Knight v. Rogers, 22 Ga. App. 308, 95 S.E. 997 (1918).

Right to a money rule depends on the existence of the relation of attorney and client, and is limited to the client. Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943); Endicott v. Grogan, 86 Ga. App. 149, 70 S.E.2d 879 (1952); Hilton v. Bazemore, 112 Ga. App. 659, 145 S.E.2d 765 (1965).

One not client cannot enforce claim by rule against attorney. — If, as the result of an action instituted by an attorney for the attorney's client, money has come into the hands of the attorney, the defendant in that action who claims title to the money but who is not the client of the attorney, cannot enforce defendant's claim by rule against the attorney. Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943).

Rule will only lie if attorney either seeks, in opposition to the explicit terms of the attorney's agreement, knowingly and fraudulently to withhold a sum not authorized thereby, or, in withholding such funds, acts in ignorance or misapprehension of facts which the attorney's duty to

the attorney's client obligates the attorney to know. Felton v. Smith, 52 Ga. App. 436, 183 S.E. 634 (1936).

Section inapplicable if ambiguous contract. — Summary remedy to enforce the payment of money belonging to a client, wrongfully withheld by the attorney, is penal in its nature; and such a proceeding is not intended to be employed when, under all the proper pleadings, the question at issue is not the dereliction of the attorney in wrongfully withholding funds of the client, but rather is the proper construction of an ambiguous contract. Felton v. Smith, 52 Ga. App. 436, 183 S.E. 634 (1936).

Recovery of fees. — Actual amount of money collected may be recovered by rule. Langmade & Evans v. Glenn, 57 Ga. 525 (1876).

Executed agreement that proceeds of certain note shall be kept as attorney's fees is enforceable. Whitehead v. Fitzpatrick, 58 Ga. 348 (1877).

Attorney cannot retain a part of money recovered as a fee. Conyers v. Gray, 67 Ga. 329 (1881).

Attorney cannot recover a fee if the attorney fails to pay over money belonging to the client. Gray v. Conyers, 70 Ga. 349 (1883).

Answer of attorney to rule is evidence for attorney so far as responsive to rule. Foster v. Reid, 58 Ga. 221 (1877).

When traverse filed. — Traverse to attorney's answer to money rule may be filed at any time before rule is discharged. Lane v. Brinson, 12 Ga. App. 760, 78 S.E. 725 (1913).

Traverse is to be tried by a jury. Smith v. Bush, 58 Ga. 121 (1877); West v. Hill & Adams, 23 Ga. App. 636, 99 S.E. 155 (1919); Felton v. Smith, 52 Ga. App. 436, 183 S.E. 634 (1936).

Movant cannot file traverse after court discharges rule. — While movant may traverse the answer at any time before the rule is discharged, yet if the court proceeds at the first term to hear and discharge the rule upon the verified and untraversed answer of the respondent, the movant cannot then file a traverse and demand as a matter of right that the rule be reinstated. Screven Oil Mill v. Guyton, 44 Ga. App. 820, 162 S.E. 920 (1932).

When rule against attorney heard. — Rule against attorney may be heard and disposed of at term to which rule is made returnable. Screven Oil Mill v. Guyton, 44 Ga. App. 820, 162 S.E. 920 (1932).

Response to rule nisi. — Upon rule nisi being granted on sufficient prima facie showing, attorney is required to respond in writing under oath, and it is only if such answer is not denied that the rule will be discharged or made absolute according as the court may deem the answer sufficient or not. Felton v. Smith, 52 Ga. App. 436, 183 S.E. 634 (1936).

Cannot amend petition by varying terms of unambiguous contract. — Court did not err in refusing to allow the movant to amend the movant's petition in a proceeding since by the proposed amendment the movant sought to add to or vary by parol the terms of the unambiguous written contract under which the respondent claimed the funds in question. West v. Hill & Adams, 23 Ga. App. 636, 99 S.E. 155 (1919).

Attorney is released by payment to plaintiff's agent. Barclay v. Hopkins, 59 Ga. 562 (1877).

Cited in Crane v. Atlanta & Lowry Nat'l Bank, 40 Ga. App. 83, 149 S.E. 58 (1929); Barge v. Ownby, 170 Ga. 440, 153 S.E. 49 (1930); Wilkins v. Jordan, 50 Ga. App. 119, 177 S.E. 344 (1934); Scott v. Sala, 54 Ga. App. 805, 189 S.E. 431 (1936); MacNerland v. Barnes, 129 Ga. App. 367, 199 S.E.2d 564 (1973).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 231.

C.J.S. — 7A C.J.S., Attorney and Client, § 263.

ALR. — Right of attorney to jury trial where he is charged with failure to turn over money or property to client, 22 ALR 1501.

Funds in hands of his attorney as subject of attachment or garnishment by client's creditor, 35 ALR3d 1094.

Attorney's failure to report promptly

receipt of money or property belonging to client as ground for disciplinary action, 91 ALR3d 975.

Restitution as mitigating circumstance in disciplinary action against attorney based in wrongful conduct creating liability to client, 95 ALR3d 724.

15-19-17. Effect of advice of counsel on client's liability; redress.

Clients shall not be relieved from their liability for damages and penalties imposed by law on the ground that they acted under the advice of their counsel but are entitled to redress from their counsel for unskillful advice. (Orig. Code 1863, § 384; Code 1868, § 445; Code 1873, § 410; Code 1882, § 410; Civil Code 1895, § 4420; Civil Code 1910, § 4958; Code 1933, § 9-607.)

Law reviews. — For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007).

JUDICIAL DECISIONS

Factors bearing on adequacy of representation. — When inadequate representation of counsel is alleged, the critical factual inquiry ordinarily relates to whether the defendant had a defense which was not presented; whether trial counsel consulted sufficiently with the accused, and adequately investigated the facts and the law; and whether the omissions charged to trial counsel resulted from inadequate preparation rather than from unwise choices of trial tactics and strategy. Austin v. Carter, 248 Ga. 775, 285 S.E.2d 542 (1982).

Strategy and tactics are lawyer's exclusive province. — Decisions on which witnesses to call, whether and how to conduct cross-examinations, what jurors to accept or strike, what trial motions should be made, and all other strategies and tactical decisions are the exclusive province of the lawyer after consultation with the client. Austin v. Carter, 248 Ga. 775, 285 S.E.2d 542 (1982).

Not ineffective although other lawyers might have conducted different defense. — Simply because other lawyers might have exercised different judgments and conducted defendant's defense in a different manner does not require a finding that defense counsel's representation of petitioner was so inadequate as to amount to a denial of effective assistance of counsel. Austin v. Carter, 248 Ga. 775, 285 S.E.2d 542 (1982).

Defense counsel not ineffective counsel. — Courtroom activity of defendant's lead counsel during voir dire examination of the jury, waiver of defendant's motions for preliminary hearing and change of venue, failure to obtain a copy of the autopsy report on the victim, failure to make an opening statement, failure to solicit certain important alleged testimony, and the failure to file any requests to charge, were part of counsel's trial tactics after consultation with defendant, were within the exclusive province of the lawyer, and did not constitute ineffective assistance of counsel. Futch v. State, 151 Ga. App. 519, 260 S.E.2d 520 (1979).

When malpractice action accrues. — Action for attorney malpractice accrues, and statute of limitations begins to run, from date of attorney's breach of duty, that is, from the date of the alleged negligent or unskillful act. Riddle v. Driebe, 153 Ga. App. 276, 265 S.E.2d 92 (1980).

Applicable statute of limitations is four years. — In Georgia, legal malpractice is based upon the breach of a duty imposed by the attorney-client contract of employment, and, as such, the applicable statute of limitations is four years. Riddle v. Driebe, 153 Ga. App. 276, 265 S.E.2d 92 (1980).

Public reprimand for allowing statute of limitations to run. — If attorney, by failing adequately to represent client and by failing to inform client of the attorney's intention to withdraw from representation of the client, causes the statute of limitations on the client's claim to run, the appropriate discipline would be a public reprimand. In re Price, 244 Ga. 532, 261 S.E.2d 349 (1979).

Summary judgment for attorney. — Affidavit by a defendant in a legal malpractice action to the effect that the attorney's representation of plaintiff complied with applicable standards of professional competence, if not contradicted by expert testimony, will authorize summary judgment for the defendant attorney. Thomas v. Carlisle, 179 Ga. App. 315, 346 S.E.2d 79 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 154.

ALR. — Agreement or understanding between attorney and client to use money for unlawful purposes as affecting their rights inter se, 20 ALR 1476; 26 ALR 98.

Liability of attorney for mistake or error in drafting contract, will, or the like, 43 ALR 932.

Reliance upon advice of counsel as affecting criminal responsibility, 133 ALR 1055.

Propriety and prejudicial effect of counsel's representing defendant in criminal case notwithstanding counsel's representation or former representation of prosecution witness, 27 ALR3d 1431.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit, 55 ALR3d 930.

Attorney's negligence in connection with estate, will, or succession matters, 55 ALR3d 977.

Liability of attorney for negligence in connection with investigation or certification of title to real estate, 59 ALR3d 1176.

Reliance on, or rejection of, advice of counsel as factor affecting liability in action against liability insurer for wrongful refusal to settle claim, 63 ALR3d 725.

Power of court to order restitution to wronged client in disciplinary proceeding against attorney, 75 ALR3d 307.

Legal malpractice in settling or failing to settle client's case, 87 ALR3d 168.

Adequacy of defense counsel's representation of criminal client regarding confessions and related matters, 7 ALR4th 180.

Adequacy of defense counsel's representation of criminal client regarding venue and recusation matters, 7 ALR4th 942.

Adequacy of defense counsel's representation of criminal client regarding hypnosis and truth tests, 9 ALR4th 354.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues, 12 ALR4th 318.

Legal malpractice: defendant's right to contribution or indemnity from original tortfeasor, 20 ALR4th 338.

When statute of limitations begins to run upon action against attorney for malpractice, 32 ALR4th 260.

Liability of professional corporation of lawyers, or individual members thereof, for malpractice or other tort of another member, 39 ALR4th 556.

When statute of limitations begins to run upon action against attorney for legal malpractice — deliberate wrongful acts or omissions, 67 ALR5th 587.

ARTICLE 2

STATE BAR OF GEORGIA

Cross references. — Rules and Regulations for the Organization and Government of the State Bar of Georgia.

Law reviews. — For article advocating incorporation of the bar in Georgia, prior to the establishment of a unified state bar of Georgia, see 21 Ga. B.J. 527 (1959). For article, "Georgia Lawyers Report Gender and Racial Bias in Legal Practice: A Review of the Georgia Bar's Survey," see 28 Ga. St. B.J. 6 (1991). For article, "Black Lawyers of Georgia: In Pursuit of Justice,"

see 28 Ga. St. B.J. 25 (1991). For article, "Technology and the Third Millennium Lawyer," see 28 Ga. St. B.J. 56 (1991). For article, "What It Means to Be a Good Lawyer," see 7 Ga. St. U.L. Rev. 411 (1991).

For note, "Conflicts of Interest in the Liability Insurance Setting," see 13 Ga. L. Rev. 973 (1979).

For comment on Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), as to the constitutionality of the State Bar Act (Art. 2, Ch. 19, T. 15), see 21 Mercer L. Rev. 355 (1969). For comment discussing judicial unification of the bar in light of Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), see 6 Ga. St. B.J. 325 (1970).

JUDICIAL DECISIONS

Article does not contain matter different from that expressed in title. — This article is not subject to the attack that the article violates the constitutional prohibition against an Act containing matter different from that expressed in the title. Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

No deprivation of state bar members' freedoms. — This article does not deprive members of bar of their freedoms of contract, conscience, speech, and liberty, or deprive them of their property without due process of law. Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

Article does not violate § 34-6-1 et seq. — There is no merit in contention that Ga. L. 1963, p. 70 (see now O.C.G.A. § 15-19-30 et seq.) violates the provisions governing labor organizations and labor revisions, Ga. L. 1941, p. 515, § 1 et seq. (see now O.C.G.A. Art. 1, Ch. 6, T. 34). Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

Adoption of disciplinary rules authorized. — There is no merit in contention that this article does not authorize adoption of disciplinary rules and regulations. Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

Fee authorized to defray expenses of operating bar. — Purport of this article is to authorize the establishment of a regulatory body to regulate the practice of law, and the fee is plainly authorized for the purpose of defraying the expenses of operating the state bar; it is not a fee authorized by a revenue measure, nor is it a gratuity. Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

Political activities banned. — Ga. L. 1963, p. 70 (see now O.C.G.A. § 15-19-30 et seq.) does not authorize the bar to engage in political activities, nor does the statute authorize the license fees to be used for any activity except those in harmony with the stated purposes of those provisions. Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

RESEARCH REFERENCES

ALR. — Integration of bar, 151 ALR 617.

Validity and construction of rule or order requiring attorney to submit to physical or mental examination to determine capacity to continue in practice of law, 52 ALR3d 1326.

Sexual conduct or orientation as ground for denial of admission to bar, 21 ALR4th 1109.

Use of compulsory bar association dues or fees for activities from which particular members dissent, 40 ALR4th 672.

15-19-30. Establishment of unified state bar authorized.

In recognition of the fact that attorneys are officers of the courts of this state; that they have the exclusive right to practice law and represent members of the public in connection with their legal affairs; that they are charged with important responsibilities in connection with the administration of justice both in and out of the courts; and that for these reasons a strong legal profession is in the public interest, the Supreme Court of this state is authorized to establish as an administrative arm of the court a unified self-governing bar association which shall be known as the "State Bar of Georgia," composed of all persons licensed to practice law in this state. (Ga. L. 1963, p. 70, § 1.)

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Ga. L. 1963, p. 70, § 1 (see now O.C.G.A. § 15-19-30) does not violate Ga. Const. 1976, Art. VI, Sec. II, Para. IV (see now Ga. Const. 1983, Art. VI, Sec. VI, Para. III). Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, cert. denied, 396 U.S. 939, 90 S. Ct. 369, 24 L. Ed. 2d 240 (1969).

State bar is administrative arm of Supreme Court. — State Bar of Georgia is not a private corporation under Ga. Const. 1976, Art. III, Sec. VIII, Para. V (see now Ga. Const. 1983, Art. III, Sec. VI, Para. V); it is an administrative arm of the court. Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, cert. denied, 396 U.S. 939, 90 S. Ct. 369, 24 L. Ed. 2d 240 (1969).

Authority to create bar is valid exercise of judicial function. — Authority given Supreme Court to create the State Bar of Georgia is not legislative power, but rather is a valid exercise of a judicial function. Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, cert. denied, 396 U.S. 939, 90 S. Ct. 369, 24 L. Ed. 2d 240 (1969).

Section aids judiciary's functions. — Judiciary cannot be circumscribed or restricted in performance of judiciary's power and judiciary's duty to regulate the practice of law, and this section is in aid of the judiciary in the performance of the judiciary's functions. Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, cert. denied, 396 U.S. 939, 90 S. Ct. 369, 24 L. Ed. 2d 240 (1969).

Section is not special law. — Contention that this section is a special law on a subject for which provision has been made by a general law is without merit. Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, cert. denied, 396 U.S. 939, 90 S. Ct. 369, 24 L. Ed. 2d 240 (1969).

Supreme Court governs state bar. — This section manifests the General Assembly's approval, in the public interest, of creation of a unified state bar, but leaves the creation, organization, and government of the bar to this court. Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718, cert. denied, 396 U.S. 939, 90 S. Ct. 369, 24 L. Ed. 2d 240 (1969).

Proceedings before the State Bar are "official proceedings". — Anti-Strategic Lawsuits Against Public Participation (Anti-SLAPP) statute, O.C.G.A. § 9-11-11.1, applied to complaints against an attorney before the State Bar of Georgia because State Bar proceedings were "official proceedings authorized by law" under O.C.G.A. § 9-11-11.1(c). However, a hearing was required before the defense could be allowed. Jefferson v. Stripling, 316 Ga. App. 197, 728 S.E.2d 826 (2012).

Ordinance regulating legal profession unconstitutional. — Ordinance of the City of Savannah which purported to license attorneys at law practicing in that city was regulatory in nature and contravened Ga. Const. 1976, Art. I, Sec. II, Para. VII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV), for the reason that the power to license and regulate attorneys at law is vested in the Supreme Court of the State of Georgia and admin-

istered through that court and through the State Bar of Georgia pursuant to Ga. L. 1963, p. 70, §§ 1 and 2 (see now O.C.G.A. §§ 15-19-30 and 15-19-31). Silverman v. Mayor of Savannah, 125 Ga. App. 41, 186 S.E.2d 447 (1971).

Ordinance imposing an occupational tax on attorneys. — City ordinance imposing an occupational tax on attorneys who maintained an office and practiced law in the city did not operate as an unconstitutional precondition on the practice of law nor was an improper attempt to regulate the practice of law in violation of O.C.G.A. § 15-19-30 because the ordinance did not authorize the city to withhold a certificate from any attorney who failed to comply with the ordinance and attorneys were clearly exempted from regulatory treatment under the ordinance. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326 (2013).

Municipality barred from regulating legal profession. — No municipality may, by regulatory licensing ordinance, regulate the legal profession, although a municipality may levy occupational or license tax upon the practice of law within its municipal limits. Silverman v. Mayor of Savannah, 125 Ga. App. 41, 186 S.E.2d 447 (1971).

Cited in Brown v. City of Atlanta, 221 Ga. 121, 143 S.E.2d 388 (1965); Georgia Bar Ass'n v. Lawyers Title Ins. Corp., 222 Ga. 657, 151 S.E.2d 718 (1966); Huber v. State, 234 Ga. 357, 216 S.E.2d 73 (1975); Fleming v. State, 246 Ga. 90, 270 S.E.2d 185 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 7.

C.J.S. — 7 C.J.S., Attorney and Client, § 9.

ALR. — State bar created by act of legislature or rules of court; integrated bar, 114 ALR 161; 151 ALR 617.

15-19-31. Adoption of rules for organization and government of State Bar.

The Supreme Court shall have the authority by appropriate orders, upon recommendation made by the State Bar of Georgia, to adopt rules and regulations for the organization and government of the unified state bar and to define the rights, duties, and obligations of the members therein, including the payment of a reasonable license fee, and otherwise to regulate and govern the practice of law in this state, to the end that the unified state bar shall promote the best interest of the public by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice. (Ga. L. 1963, p. 70, § 2.)

Law reviews. — For article discussing the proposed Georgia plan for specialization in the legal field, see 12 Ga. St. B.J. 171 (1976).

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Supreme Court has the inherent power to govern the practice of law in this state. Fleming v. State, 246 Ga. 90, 270 S.E.2d 185, cert. denied, 449 U.S. 904, 101 S. Ct. 278, 66 L. Ed. 2d 136 (1980).

Unconstitutional regulation of practice of law. — Occupational tax ordinance levied on professionals and requiring registration and a fee payment at the beginning of each year, prior to the transaction of business, operated as an unconstitutional precondition on the prac-

tice of law. Sexton v. City of Jonesboro, 267 Ga. 571, 481 S.E.2d 818 (1997).

Ordinance regulating legal profession unconstitutional. — Ordinance of the City of Savannah which purported to license attorneys at law practicing in that city was regulatory in nature and contravened Ga. Const. 1945, Art. I, Sec. II, Para. VII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV), for the reason that the power to license and regulate attorneys at law is vested in the Supreme Court of the State of Georgia and administered through that court and through the State Bar of Georgia pursuant to Ga. L. 1963, p. 70, §§ 1 and 2 (see now O.C.G.A. §§ 15-19-30 and 15-19-31). Silverman v. Mayor of Savannah, 125 Ga. App. 41, 186 S.E.2d 447 (1971).

Doctrine of judicial immunity. — Since it was the Georgia Supreme Court, and not the State Bar, that ordered the suspension of the plaintiff, the act was clearly a judicial act within the constitutional power of the State Supreme Court and the State Bar was entitled to judicial immunity from liability for damages. Cohran v. State Bar, 790 F. Supp. 1568 (N.D. Ga. 1992).

Municipality barred from regulating legal profession. — No municipality may, by regulatory licensing ordinance, regulate the legal profession, although a municipality may levy an occupational or license tax upon the practice of law within its municipal limits. Silverman v. Mayor of Savannah, 125 Ga. App. 41, 186 S.E.2d 447 (1971).

Cited in State Bar v. Ellis, 116 Ga. App. 721, 158 S.E.2d 280 (1967); Zagoria v. DuBose Enters., Inc., 163 Ga. App. 880, 296 S.E.2d 353 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 7.

C.J.S. — 7 C.J.S., Attorney and Client, § 43.

ALR. — Misconduct of one partner in a law firm as a factor in disbarment or other disciplinary proceedings against other partner, 157 ALR 613.

15-19-32. Option of jury trial prior to final order or disbarment.

The rules and regulations governing the unified state bar shall provide that before a final order of any nature or any judgment of disbarment is entered the attorney involved may elect to have any material issues of fact determined by a jury in the superior court of the county of his residence. (Ga. L. 1963, p. 70, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 7.

ALR. — Appointment of counsel for attorney facing disciplinary charges, 86 ALR4th 1071.

15-19-33. Procedure for adoption of rules.

A copy of proposed rules and regulations of the State Bar of Georgia shall be furnished to all members. The Supreme Court shall set down for public hearing the adoption of proposed rules and regulations and any attorney or other person interested may appeal in person or by brief for the purpose of either supporting or opposing proposed rules and regulations. (Ga. L. 1963, p. 70, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 7.

C.J.S. — 7 C.J.S., Attorney and Client, § 43.

15-19-34. Amendment of rules.

Rules and regulations of the State Bar of Georgia may be amended upon recommendation of the State Bar of Georgia under such rules and procedures as shall be prescribed by the Supreme Court. (Ga. L. 1963, p. 70, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 7.

ARTICLE 3

REGULATION OF PRACTICE OF LAW

Cross references. — Restriction on practice of law by judges of superior courts, § 15-6-5. Restriction on practice of law by clerks of superior courts, § 15-6-52. Restriction on practice of law by judges of probate court, § 15-9-3.

RESEARCH REFERENCES

ALR. — Right of one not admitted to practice, or unlicensed, to recover compensation for legal services, 4 ALR 1087; 118 ALR 646.

What amounts to practice of law, 151 ALR 781.

Liability of attorney for loss of client's money or personal property in his possession or entrusted to him, 26 ALR2d 1340.

Construction and operation of attorney's general or periodic retainer fee or salary contract, 43 ALR2d 677.

Propriety of attorney who has represented corporation acting for corporation in controversy with officer, director, or stockholder, 1 ALR4th 1124.

Rights of attorneys leaving firm with respect to firm clients, 1 ALR4th 1164.

Layman's assistance to party in divorce proceeding as unauthorized practice of law, 12 ALR4th 656.

Assignability of claim for legal malpractice, 40 ALR4th 684.

Cost of services provided by paralegals or the like as compensable element of award in state court, 73 ALR4th 938.

Drafting of will or other estate-planning activities as illegal or unauthorized practice of law, 25 ALR6th 323.

15-19-50. "Practice of law" defined.

The practice of law in this state is defined as:

(1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body;

(2) Conveyancing;

(3) The preparation of legal instruments of all kinds whereby a legal right is secured;

(4) The rendering of opinions as to the validity or invalidity of titles to real or personal property;

(5) The giving of any legal advice; and

(6) Any action taken for others in any matter connected with the law. (Ga. L. 1931, p. 191, § 2; Code 1933, § 9-401; Ga. L. 1937, p. 753, § 1; Ga. L. 1976, p. 1511, § 1.)

Law reviews. — For annual survey article on legal ethics, see 56 Mercer L. Rev. 315 (2004). For annual survey of construction law, see 57 Mercer L. Rev. 79 (2005).

For comment on Florida Bar v. Town, 174 So.2d 395 (Fla. 1965) as to unauthorized practice of law, see 17 Mercer L. Rev. 322 (1965). For comment on Georgia Bar Ass'n v. Lawyers Title Ins. Co., 222 Ga. 657, 151 S.E.2d 718 (1966), discussing constitutional permissibility of legislative definition of practice of law and suggesting solutions to unauthorized practice of law, see 18 Mercer L. Rev. 486 (1967).

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Refusal to allow representation by out-of-state counsel. — Inasmuch as the practice of law includes the giving of legal advice, a trial court does not err in refusing to allow an out-of-state attorney to sit at counsel's table or talk to defense counsel during the trial, especially since there is no guarantee that a defendant can be represented by out-of-state counsel. Williams v. State, 157 Ga. App. 494, 277 S.E.2d 781 (1981).

Filing of petition to revoke probation was not the unauthorized practice of law. — Probation officer who was an employee of a private corporation retained to provide probation supervision services in misdemeanor cases pursuant to O.C.G.A. § 42-8-100(f)(1) (now (g)(1)) was still an officer of the court and could file a petition to revoke defendant's probation on a misdemeanor shoplifting charge; probation officer's action did not constitute the practice of law, let alone the unauthorized practice of law. Huzzie v. State, 253 Ga. App. 225, 558 S.E.2d 767 (2002).

Qualifications of proposed expert attorney witness. — Trial court did not abuse the court's discretion in granting a motion in limine in a legal malpractice action to exclude a purported expert witness on the standard of care in a real estate transaction, under former O.C.G.A. § 24-9-67.1 (see now O.C.G.A. § 24-7-702), because the witness, although a member of the state bar, was not then engaged in any activities that constituted practicing law in Georgia under O.C.G.A. § 15-19-50. Although the witness worked as a merchant in a family-owned wholesale equipment distribution business, at the relevant time, the witness did not represent the company or any other litigant in court, did not prepare deeds or other conveyance documents, did not search property title records or issue an attorney's title certificate, and did not perform the legal tasks inherent in closing real estate transactions. Wilson v. McNeely, 307 Ga. App. 876, 705 S.E.2d 874 (2011).

Cited in Dixon v. Reliable Loans, Inc., 112 Ga. App. 618, 145 S.E.2d 771 (1965); In re Clarkson, 125 Ga. App. 481, 188 S.E.2d 113 (1972); Green v. Caldwell, 229 Ga. 650, 193 S.E.2d 847 (1972); Rary v. Guess, 129 Ga. App. 102, 198 S.E.2d 879 (1973); Huber v. State, 234 Ga. 357, 216 S.E.2d 73 (1975); Smith v. Nations, 147 Ga. App. 623, 249 S.E.2d 676 (1978); In re Dowdy, 247 Ga. 488, 277 S.E.2d 36 (1981); In re Nichols, 248 Ga. 254, 282 S.E.2d 341 (1981); United States v. Allen, 699 F.2d 1117 (11th Cir. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Duties of district attorney constitute practice of law. — Although a solicitor general (now district attorney) has only the state for a client in the performance of the attorney's public duties, the solicitor general is necessarily a "partisan in the cases" when appearing on behalf of the state; these duties do constitute the practice of law. 1965-66 Op. Att'y Gen. No. 66-189.

ADVISORY OPINIONS OF THE STATE BAR

Out-of-state law firm. — Out-of-state law firm may open and maintain an office in the State of Georgia under the direction of a full-time associate of that firm, the associate being a full-time Georgia resident and a member of the State Bar of Georgia. Adv. Op. No. 78-23 (May 19, 1978).

Real estate closings. — Lawyers may not ethically conduct a "witness only" real estate closing; Georgia law requires that a lawyer handle a real estate closing (O.C.G.A. § 15-19-50). A lawyer who conducts a real estate closing acting only as a witness misrepresents his or her role in the process in violation of Ga. St. Bar R. 4-102(d):8.4. In re Formal Advisory Opinion No. 13-1, 295 Ga. 749, 763 S.E.2d 875 (2014).

Real estate closings. — It is ethically improper for lawyers to permit nonlawyers to close real estate transactions. The lawyer's physical presence at a closing will assure that there is supervision of the work of the paralegal which is direct and constant. Adv. Op. No. 00-3 (Feb. 11, 2000).

Unauthorized practice of law by nonlawyers. — Lawyer is aiding a nonlawyer in the unauthorized practice of law when the lawyer allows a nonlawyer member of his or her staff to prepare and sign correspondence which threatens legal action or provides legal advice or both. Generally, a lawyer is aiding a nonlawyer in the unauthorized practice of law whenever the lawyer effectively substitutes the legal knowledge and judgment of the nonlawyer for his or her own. Regardless of the task in question, a lawyer should never place a nonlawyer in situations in which he or she is called upon to exercise what would amount to independent professional judgment for the lawyer's client. Adv. Op. No. 00-2 (Feb. 11, 2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, §§ 1, 119 et seq.

C.J.S. — 7 C.J.S., Attorney and Client, §§ 2, 29 et seq.

ALR. — Practicing or pretending to practice law without authority as contempt, 36 ALR 533; 100 ALR 236.

What amounts to practice of law, 111 ALR 19; 125 ALR 1173; 151 ALR 781.

Services in connection with tax matters as practice of law, 9 ALR2d 797.

Drafting, or filling in blanks in printed forms, of instruments relating to land by real-estate agents, brokers, or managers as constituting practice of law, 53 ALR2d 788.

Trust company's act as fiduciary as practice of law, 69 ALR2d 404.

Right of attorney admitted in one state to recover compensation for services rendered in another state where he was not admitted to the bar, 11 ALR3d 907.

Representation of another before state public utilities or service commission as involving practice of law, 13 ALR3d 812.

Activities of law clerks as illegal practice of law, 13 ALR3d 1137.

15-19-51. Unauthorized practice of law forbidden.

(a) It shall be unlawful for any person other than a duly licensed attorney at law:

(1) To practice or appear as an attorney at law for any person other than himself in any court of this state or before any judicial body;

(2) To make it a business to practice as an attorney at law for any person other than himself in any of such courts;

(3) To hold himself out to the public or otherwise to any person as being entitled to practice law;

(4) To render or furnish legal services or advice;

(5) To furnish attorneys or counsel;

(6) To render legal services of any kind in actions or proceedings of any nature;

(7) To assume or use or advertise the title of "lawyer," "attorney," "attorney at law," or equivalent terms in any language in such manner as to convey the impression that he is entitled to practice law or is entitled to furnish legal advice, services, or counsel; or

(8) To advertise that either alone or together with, by, or through any person, whether a duly and regularly admitted attorney at law or not, he has, owns, conducts, or maintains an office for the practice of law or for furnishing legal advice, services, or counsel.

(b) Unless otherwise provided by law or by rules promulgated by the Supreme Court, it shall be unlawful for any corporation, voluntary association, or company to do or perform any of the acts recited in subsection (a) of this Code section. (Ga. L. 1931, p. 191, § 1; Code 1933, §§ 9-402, 9-403.)

Cross references. — False or misleading advertising of goods or services generally, § 10-1-390 et seq. Use of third-year law students and law school staff instructors as legal assistants in criminal proceedings, § 15-18-22. Grant or denial of commission or recommission; grounds; unauthorized practice of law, § 45-17-2.3. Third-year law students, Ga. Sup. Ct., Rules 91 — 96.

Law reviews. — For article, "Offenders Beware — The UPL Department Is on the Case," see 9 Ga. St. B.J. 38 (2003).

JUDICIAL DECISIONS

Legal aid organizations excluded. — This section was intended to exclude legal aid organizations from reach of restrictive legislation concerning unauthorized practice of law by a corporation. Dixon v. Georgia Indigent Legal Servs., Inc., 388 F. Supp. 1156 (S.D. Ga. 1974), aff'd, 532 F.2d 1373 (5th Cir. 1976).

Corporations prohibited from performing legal services. — Only duly licensed attorneys may appear in any court in this state or make it a business to

practice as an attorney, and corporations are prohibited from rendering or performing legal services of any kind. Dixon v. Georgia Indigent Legal Servs., Inc., 388 F. Supp. 1156 (S.D. Ga. 1974), aff'd, 532 F.2d 1373 (5th Cir. 1976).

Company representation before board valid. — Agreement in which a company committed itself to represent a taxpayer's interests before the board of equalization was not void as constituting the unauthorized practice of law. Grand Partners Joint Venture I v. Realtax Resource, Inc., 225 Ga. App. 409, 483 S.E.2d 922 (1997).

Letter from nonlawyer employee was not answer to complaint. — Letter mailed to the trial court from a nonlawyer employee of defendant partnership did not constitute an answer to the complaint since only a duly licensed attorney may answer a complaint for an individual who does not appear pro se. Mine Chen v. Alexander Terry Assocs., 228 Ga. App. 345, 491 S.E.2d 834 (1997).

Signing of principal's name to petition by authorized agent not unlawful. — Mere signing of the name of the principal to a petition by a duly authorized agent, which petition was to be filed in court, did not constitute the unlawful practice of law on the part of such agent as defined in former Code 1933, §§ 9-401 through 9-403 (see now O.C.G.A. §§ 15-19-50 through 15-19-52). Lanier v. Lanier, 79 Ga. App. 131, 53 S.E.2d 131 (1949).

Investigator's testimony did not violate rule prohibiting counsel as witness. — Defendant's claim that an investigator employed by the district attorney was bound by the ethical and legal standards that prohibited the district attorney from testifying before the grand jury was rejected as an agent could not delegate the agent's authority unless specifically empowered to do so and as the discretionary powers conferred upon public agents could not be delegated without authorization; further, an unlicensed individual could not practice law and a witness could not testify to hearsay other than in specified cases. Hall v. State, 273 Ga. App. 203, 614 S.E.2d 844 (2005).

Insurer may use staff counsel to defend insured. — Activity of furnishing an attorney to an insured by an insurance company using "staff counsel" (a salaried full-time employee of the insurance company) to defend a suit covered by a policy issued by the insurance company constitutes activities "in and about" the insurance company's "own immediate affairs" under O.C.G.A. § 15-19-53 and is therefore not an unauthorized practice of law under O.C.G.A. § 15-19-51. Coscia v. Cunningham, 250 Ga. 521, 299 S.E.2d 880 (1983).

Preparing and filing petitions and explaining bankruptcy law. — Respondent's actions in preparing and filing bankruptcy petitions and explaining the bankruptcy laws to debtors, for which services the respondent was paid compensation, constituted the unauthorized practice of law. In re Martin, 40 Bankr. 695 (Bankr. N.D. Ga. 1984).

Attorney countenanced the unauthorized practice of law by laymen by authorizing a non-attorney to prepare a bankruptcy petition and supporting documents and to sign the attorney's name to the documents. Geibank Indus. Bank v. Martin, 97 Bankr. 1013 (Bankr. N.D. Ga. 1989).

No right to representation by non-attorney. — While it is true that a defendant may proceed to defend oneself without counsel, defendant may not expand the right to counsel to include representation by someone else unauthorized to practice law. Pfeiffer v. State, 173 Ga. App. 374, 326 S.E.2d 562 (1985); Gamble v. Diamond "D" Auto Sales, 221 Ga. App. 688, 472 S.E.2d 446 (1996).

Evidence sufficient to support conviction for unauthorized practice of law. — Gaines v. State, 177 Ga. App. 795, 341 S.E.2d 252 (1986).

Probation officer who was an employee of a private corporation retained to provide probation supervision services in misdemeanor cases pursuant to O.C.G.A. § 42-8-100(f)(1) (now (g)(1)) was still an officer of the court and could file a petition to revoke defendant's probation on a misdemeanor shoplifting charge; probation officer's action did not constitute the practice of law, let alone the unauthorized practice of law. Huzzie v. State, 253 Ga. App. 225, 558 S.E.2d 767 (2002).

Evidence was sufficient to support defendant's convictions for unlawful abuse, neglect, or exploitation of an elder person and unauthorized practice of law, in violation of O.C.G.A. §§ 15-19-51(a)(7) and 30-5-8(a)(1), because defendant befriended an 89-year-old widower, falsely identified himself as an attorney, and eventually obtained the widower's car, jewelry, use of his credit cards for unauthorized purposes, and defendant also forged documents and coerced the widower into changing other documents regarding the estate; the widower was within the definition of "elder person" under O.C.G.A. § 30-5-3(7.1) (now paragraph (6)), and the acts were within the definition of "exploitation" pursuant to O.C.G.A. § 30-5-3(9) (now paragraph (8)). Marks v. State, 280 Ga. 70, 623 S.E.2d 504 (2005).

There was sufficient evidence from which a rational trier of fact could find beyond a reasonable doubt that defendant engaged in the unauthorized practice of law by identifying to a probationer and the probationer's probation officer that the defendant was entitled to practice law and by furnishing legal services and advice to the probationer. The probationer agreed to pay the defendant for help in making probation payments. Sawhill v. State, 292 Ga. App. 438, 665 S.E.2d 353 (2008).

Signing and submission of petition for revocation of probation. — Signing and submission to the court of a petition for revocation of probation by a probation officer does not constitute the unauthorized practice of law. Leverette v. State, 248 Ga. App. 304, 546 S.E.2d 63 (2001).

Violation as negligence per se. — Because there was ample evidence that defendant's unauthorized practice of law was the direct cause of plaintiff's injuries, the trial court did not err in charging the jury on negligence per se. Ledee v. Devoe, 250 Ga. App. 15, 549 S.E.2d 167 (2001).

Cited in Vaid v. State, 165 Ga. App. 823, 302 S.E.2d 631 (1983); Keith v. Alexander Underwriters Gen. Agency, Inc., 219 Ga. App. 36, 463 S.E.2d 732 (1995); In re Stoutamire, 201 Bankr. 592 (Bankr. S.D. Ga. 1996); Congress Re-Insurance Corp. v. Archer-Western Contractors, 226 Ga. App. 829, 487 S.E.2d 679 (1997); Winzer v. EHCA Dunwoody, LLC, 277 Ga. App. 710, 627 S.E.2d 426 (2006); Morton v. Horace Mann Ins. Co., 282 Ga. App. 734, 639 S.E.2d 352 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Representation of indigents by law students. — Law students not yet admitted to practice law are not permitted to represent indigent parties in Georgia. 1963-65 Op. Att'y Gen. p. 542; but see 1972 Op. Att'y Gen. No. 72-54.

Person or attorney to appear when driver's license at issue. — General rule is that no one other than the person whose driver's license is in question, or a duly licensed attorney employed by that person, may appear at a Department of Public Safety hearing on the person's behalf. 1972 Op. Att'y Gen. No. 72-54.

While persons appearing before Department of Public Safety hearing officers on the issue of driver's license revocations generally must either represent themselves or be represented by a licensed attorneys employed by the individuals, when such persons are indigents, the individuals may be accompanied by certified, third-year law students working through an approved legal aid society, who may offer the individuals legal advice during the hearings; since such proceedings are administrative hearings, and not trials, such certified law students may appear at the hearings without licensed counsel accompanying the students. 1972 Op. Att'y Gen. No. 72-54.

Prosecution of claims in magistrate court. — Only a member of the Georgia State Bar may represent another in a proceeding in magistrate court, but a corporation may appear pro se in such a proceeding by and through its nonattorney officer or employee. 1983 Op. Att'y Gen. No. U83-73.

Insurance contract not providing for insurer's control of attorney not unlawful. — If the contract specifies that the insurer shall have no voice in the insured's selection of an attorney and,

once an attorney is retained, shall neither exercise any control over that attorney nor issue any instructions to the attorney, except instructions as to the procedures to be followed in filing claims under the policy, and the insurer does not contemplate performing any acts which only a licensed member of the bar may perform, that contract does not provide for the unlawful practice of law. 1974 Op. Att'y Gen. No. 74-48.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 119 et seq.

C.J.S. — 7 C.J.S., Attorney and Client, §§ 32, 39.

ALR. — Practicing or pretending to practice law without authority as contempt, 36 ALR 533; 100 ALR 236.

Right of corporation to perform or to hold itself out as ready to perform functions in the nature of legal services, 73 ALR 1327; 105 ALR 1364; 157 ALR 282.

Services incident to membership in automobile "association" as practice of law or as ground for discipline of attorney who conducts the "association" or is connected therewith, 106 ALR 548.

What amounts to practice of law, 125 ALR 1173; 151 ALR 781.

Offense of barratry; criminal aspects of champerty and maintenance, 139 ALR 620.

Drafting, or filling in blanks in printed forms, of instruments relating to land by real-estate agents, brokers, or managers as constituting practice of law, 53 ALR2d 788.

Trust company's act as fiduciary as practice of law, 69 ALR2d 404.

Title examination activities by lending institution, insurance company, or title and abstract company, as illegal practice of law, 85 ALR2d 184.

Handling, preparing, presenting, or trying workers' compensation claims or cases as practice of law, 2 ALR3d 724; 58 ALR5th 449.

Operations of collection agency as unauthorized practice of law, 27 ALR3d 1152.

What activities of stock or securities broker constitute unauthorized practice of law, 34 ALR3d 1305.

Sale of books or forms designed to enable layman to achieve legal results without assistance of attorney as unauthorized practice of law, 71 ALR3d 1000.

Nature of legal services or law-related services which may be performed for others by disbarred or suspended attorney, 87 ALR3d 279.

Activities of insurance adjusters as unauthorized practice of law, 29 ALR4th 1156.

Disciplinary action against attorney for aiding or assisting another person in unauthorized practice of law, 41 ALR4th 361.

Jury: who is lawyer or attorney disqualified or exempt from service, or subject to challenge for cause, 57 ALR4th 1260.

Propriety and effect of corporation's appearance pro se through agent who is not attorney, 8 ALR5th 653.

Criminal defendant's representation by person not licensed to practice law as violation of right to counsel, 19 ALR5th 351.

What constitutes "unauthorized practice of law" by out-of-state counsel, 83 ALR5th 497.

What constitutes unauthorized practice of law by paralegal, 109 ALR5th 275.

Unauthorized practice of law — Real estate closings, 119 ALR5th 191.

Propriety of insurers' use of staff attorneys to represent insureds, 2 ALR6th 537.

Drafting of will or other estate-planning activities as illegal or unauthorized practice of law, 25 ALR6th 323.

Application of class-of-one theory of equal protection to public employment, 32 ALR6th 457.

Matters constituting unauthorized practice of law in bankruptcy proceedings, 32 ALR6th 531.

Unauthorized practice of law as contempt, 40 ALR6th 463.

15-19-52. Lawful acts by parties involved; banking advice; legal instruments; title papers.

Nothing contained in this article shall prevent any corporation, voluntary association, or individual from doing any act or acts set out in Code Section 15-19-50 to which the persons are a party; but, in preparing and filing affidavits in attachments and prosecuting such proceedings, it shall be unlawful for the plaintiffs to act through any agent or employee who is not a duly licensed attorney at law. Moreover, no bank shall be prohibited from giving any advice to its customers in matters incidental to banks or banking; nor shall any person, firm, or corporation be prohibited from drawing any legal instrument for another person, firm, or corporation, provided it is done without fee and solely at the solicitation and the request and under the direction of the person, firm, or corporation desiring to execute the instrument. Furthermore, a title insurance company may prepare such papers as it thinks proper or necessary in connection with a title which it proposes to insure, in order, in its opinion, for it to be willing to insure the title, where no charge is made by it for the papers. (Ga. L. 1931, p. 191, § 1; Code 1933, § 9-401; Ga. L. 1937, p. 753, § 1; Ga. L. 1976, p. 1511, § 1.)

Cross references. — Definition of title insurance, § 33-7-8.

Law reviews. — For annual survey of real property law, see 56 Mercer L. Rev. 395 (2004).

For comment discussing whether title companies utilizing attorneys are engaged in the practice of law, see 16 Mercer L. Rev. 349 (1964). For comment on Florida Bar v. Town, 174 So.2d 395 (Fla. 1965) as to unauthorized practice of law, see 17 Mercer L. Rev. 322 (1965). For comment on Georgia Bar Ass'n v. Lawyers Title Ins. Co., 222 Ga. 657, 151 S.E.2d 718 (1966), discussing constitutional permissibility of legislative definition of practice of law and suggesting solutions to unauthorized practice of law, see 18 Mercer L. Rev. 486 (1967).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 15-19-52 is not unconstitutional, but merely was obviated by the subsequent creation of the State Bar of Georgia as an administrative arm of the Supreme Court; thus, since the issue was within the Supreme Court's inherent power to regulate the practice of law, and not the constitutionality of that section, notice to the Attorney General was not required. Eckles v. Atlanta Tech. Group, Inc., 267 Ga. 801, 485 S.E.2d 22 (1997).

Construction with § 44-7-50. — Former Code 1933, § 9-401 (see now O.C.G.A. § 15-19-52) was not in conflict with former Code 1933, § 61-301 (see now O.C.G.A. § 44-7-50), which allowed nonattorneys to demand possession of the tenant, and swear out an oath to the facts before a judge, in a proceeding against a tenant holding over. Connor v. O'Brien, 71 Ga. App. 588, 31 S.E.2d 678 (1944); Battles v. Anchor Rome Mills, Inc., 80 Ga. App. 47, 55 S.E.2d 156 (1949).

Contempt proceeding is not among the "attachment" proceedings addressed by O.C.G.A. § 15-19-52. R.R.R. Ltd. Partnership v. Recreational Servs., Inc., 267 Ga. 757, 481 S.E.2d 225 (1997).

Swearing out warrant by agent. — In dispossessory warrant proceeding, it is not a violation of this section for an agent, who is not a duly licensed attorney at law, to swear out the warrant, that is, make

the affidavit upon which the proceeding is based. Connor v. O'Brien, 71 Ga. App. 588, 31 S.E.2d 678 (1944); Battles v. Anchor Rome Mills, Inc., 80 Ga. App. 47, 55 S.E.2d 156 (1949).

Attorney as agent of highest rank. — What an agent can do for a principal, an attorney at law can likewise do, because an attorney at law is an agent of the highest rank. Jackson v. Fincher, 128 Ga. App. 148, 195 S.E.2d 762 (1973).

Affidavit by attorney or agent. — Ordinarily, an agent or attorney at law may make an affidavit to legal proceedings on behalf of a client. Jackson v. Fincher, 128 Ga. App. 148, 195 S.E.2d 762 (1973).

There are a limited number of matters in which an agent or attorney may not make an affidavit for a principal, notably, when an appeal is filed and a supersedeas is sought, or relief from payment of court costs is sought by affidavit in forma pauperis. Jackson v. Fincher, 128 Ga. App. 148, 195 S.E.2d 762 (1973).

Agent may make affidavit for client contesting amount or justice of plaintiff's claim in foreclosure on personalty. Jackson v. Fincher, 128 Ga. App. 148, 195 S.E.2d 762 (1973).

One person cannot make affidavit in name of another, though that person may make an affidavit in the person's own name as agent or attorney of such other, if the law so authorizes. Jackson v. Fincher, 128 Ga. App. 148, 195 S.E.2d 762 (1973).

Proof of attorney's representation of party is sufficient evidence of employment and authority. — In proceedings in court, if an attorney at law purports to represent a party, proof of the fact that the attorney does represent the party is sufficient evidence of employment and of authority on the part of such attorney to act according to the attorney's own judgment in the election of remedies, in the absence of evidence to the contrary. Jackson v. Fincher, 128 Ga. App. 148, 195 S.E.2d 762 (1973).

Signing of principal's name to petition by authorized agent. — Mere signing of the name of the principal to a petition by a duly authorized agent, which petition is to be filed in court, does not constitute unlawful practice of law on the part of such agent as defined in former Code 1933, §§ 9-401 through 9-403 (see now O.C.G.A. §§ 15-19-50 through 15-19-52). Lanier v. Lanier, 79 Ga. App. 131, 53 S.E.2d 131 (1949).

Corporation can bring action on corporation's own behalf without a lawyer. Knickerbocker Tax Sys. v. Texaco, Inc., 130 Ga. App. 383, 203 S.E.2d 290 (1973).

Corporation must be represented by attorney in a court of record. — Corporation is not a person for purposes of exercising a constitutional right to legal self-representation and is not permitted to have as its legal representative an individual who is not licensed to practice law in the courts of record of this state. Eckles v. Atlanta Tech. Group, Inc., 267 Ga. 801, 485 S.E.2d 22 (1997), overruling, Universal Scientific, Inc. v. Wolf, 165 Ga. App. 752, 302 S.E.2d 616 (1983); Knickerbocker Tax Systems, Inc. v. Texaco, Inc., 130 Ga. App. 383, 203 S.E.2d 290 (1973); and Dixon v. Reliable Loans, Inc., 112 Ga. App. 618, 145 S.E.2d 77 (1965).

"Duly licensed attorney at law" required. — Only a licensed attorney is authorized to represent a corporation in a proceeding in a court of record, including any proceeding that may be transferred to a court of record from a court not of record. Eckles v. Atlanta Tech. Group, Inc., 267 Ga. 801, 485 S.E.2d 22 (1997), overruling, Universal Scientific v. Wolf, 165 Ga. App. 752, 302 S.E.2d 616 (1983); Knickerbocker Tax Sys. v. Texaco, Inc., 130 Ga. App. 383, 203 S.E.2d 290 (1973); and Dixon v. Reliable Loans, 112 Ga. App. 618, 145 S.E.2d 771 (1965).

Banks' advising customers on matters incidental to banking through employees who are bar members proper. — Banks that give advice to customers on matters incidental to banks or banking through their trust officer employees, who are members of the State Bar of Georgia, are not engaged in the practice of law. Robbins v. City of Rome, 230 Ga. 901, 199 S.E.2d 802 (1973).

Cited in Dixon v. Reliable Loans, Inc., 112 Ga. App. 618, 145 S.E.2d 771 (1965); In re Clarkson, 125 Ga. App. 481, 188 S.E.2d 113 (1972); Green v. Caldwell, 229 Ga. 650, 193 S.E.2d 847 (1972); Rary v.

Guess, 129 Ga. App. 102, 198 S.E.2d 879 (1973); Huber v. State, 234 Ga. 357, 216 S.E.2d 73 (1975); Smith v. Nations, 147 Ga. App. 623, 249 S.E.2d 676 (1978); In re Dowdy, 247 Ga. 488, 277 S.E.2d 36 (1981); In re Nichols, 248 Ga. 254, 282 S.E.2d 341 (1981); United States v. Allen, 699 F.2d 1117 (11th Cir. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Prosecution of claims in magistrate court. — Only a member of the Georgia State Bar may represent another in a proceeding in magistrate court, but a corporation may appear pro se in such a proceeding by and through the corporation's nonattorney officer or employee. 1983 Op. Att'y Gen. No. U83-73.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, §§ 1, 119 et seq.

C.J.S. — 7 C.J.S., Attorney and Client, §§ 2, 29 et seq.

ALR. — Right of corporation to perform or to hold itself out as ready to perform functions in the nature of legal services, 157 ALR 282.

Validity of will drawn by layman who, in so doing, violated criminal statute forbidding such activities by one other than licensed attorneys, 18 ALR2d 918.

Title examination activities by lending institution, insurance company, or title and abstract company, as illegal practice of law, 85 ALR2d 184.

Propriety and effect of corporation's appearance pro se, through agent who is not attorney, 19 ALR3d 1073.

Necessity that executor or administrator be represented by counsel in presenting matters in probate court, 19 ALR3d 1104.

Operations of collection agency as unauthorized practice of law, 27 ALR3d 1152.

What activities of stock or securities broker constitute unauthorized practice of law, 34 ALR3d 1305.

Sale of books or forms designed to enable layman to achieve legal results without assistance of attorney as unauthorized practice of law, 71 ALR3d 1000.

Existence and extent of right of litigant in civil case, or of criminal defendant, to represent himself before state appellate courts, 24 ALR4th 430.

Propriety and effect of corporation's appearance pro se through agent who is not attorney, 8 ALR5th 653.

15-19-53. Examination and abstract of titles; title insurance; employment of attorneys.

This article shall not prohibit a person, corporation, or voluntary association from examining the record of titles to real property, nor shall it prohibit a person, corporation, or voluntary association from preparing and issuing abstracts of title from such examination of records and certifying to the correctness of the same, nor from issuing policies of insurance on titles to real or personal property, nor from employing an attorney or attorneys in and about their own immediate affairs or in any litigation to which they are or may be a party. However, nothing contained in this Code section shall authorize any person, corporation, or voluntary association other than an attorney at law to express, render, or issue any legal opinion as to the status of the title to real or personal property. (Ga. L. 1931, p. 191, § 1; Code 1933, § 9-403.)

Cross references. — Definition of title insurance, § 33-7-8.

JUDICIAL DECISIONS

Title company may insure titles and employ attorneys to defend actions to which the company is or may be a party. Atlanta Title & Trust Co. v. Fulkalb, Inc., 56 Ga. App. 742, 193 S.E. 796 (1937).

It is neither illegal nor contrary to public policy for a title insurance company to contract to furnish, and to furnish, attorneys at law to defend actions against parties involving titles the company has insured. Atlanta Title & Trust Co. v. Fulkalb, Inc., 56 Ga. App. 742, 193 S.E. 796 (1937).

Title company was an interested party and had such an interest in an action attacking the title insured as would entitle the title company to defend the case by counsel. Atlanta Title & Trust Co. v. Fulkalb, Inc., 56 Ga. App. 742, 193 S.E. 796 (1937).

Use of staff counsel not unauthorized practice of law. — Activity of furnishing an attorney to an insured by an insurance company using "staff counsel" (a salaried full-time employee of the insurance company) to defend a suit covered by a policy issued by the insurance company constitutes activities "in and about" the insurance company's "own immediate affairs" under O.C.G.A. § 15-19-53 and is therefore not an unauthorized practice of law under O.C.G.A. § 15-19-51. Coscia v. Cunningham, 250 Ga. 521, 299 S.E.2d 880 (1983).

Person refusing to permit title insurer to defend action attacking title cannot recover. — If a person whose title has been insured refuses to permit the title company to defend an action attacking the company's title, as contemplated in the policy issued, the person cannot recover on the policy. Atlanta Title & Trust Co. v. Fulkalb, Inc., 56 Ga. App. 742, 193 S.E. 796 (1937).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 119 et seq.

Am. Jur. Pleading and Practice Forms. — 1 Am. Jur. Pleading and Practice Forms, Abstracts of Title, § 2.

C.J.S. — 7 C.J.S., Attorney and Client, §§ 32, 39.

ALR. — Liability of one employed to examine and report on title for showing an apparent lien or defect not in reality such, 71 ALR 349.

Drafting, or filling in blanks in printed forms, of instruments relating to land by real-estate agents, brokers, or managers as constituting practice of law, 53 ALR2d 788.

Title examination activities by lending institution, insurance company, or title and abstract company, as illegal practice of law, 85 ALR2d 184.

Liability of attorney for negligence in connection with investigation or certification of title to real estate, 59 ALR3d 1176.

Nature of legal services or law-related services which may be performed for others by disbarred or suspended attorney, 87 ALR3d 279.

Misrepresentation or concealment by insured or agent avoiding liability by title insurer, 17 ALR4th 1077.

Defects affecting marketability of title within meaning of title insurance policy, 18 ALR4th 1311.

Negligence in preparing abstract of title as ground of liability to one other than person ordering abstract, 50 ALR4th 314.

Unauthorized practice of law — Real estate closings, 119 ALR5th 191.

Propriety of insurers' use of staff attorneys to represent insureds, 2 ALR6th 537.

15-19-54. Furnishing of information or clerical services to attorneys permitted.

Nothing contained in this article shall be construed to prevent a person, corporation, or voluntary association from furnishing to any person lawfully engaged in the practice of law such information or clerical services in and about his professional work as would be lawful except for Code Sections 15-19-51, 15-19-53, and 15-19-55, provided that at all times the attorney receiving the information or services shall maintain full professional and direct responsibility to his clients for the information and services received. However, no person, corporation, or voluntary association not otherwise authorized to do so shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law nor to solicit directly or indirectly professional employment for an attorney. (Ga. L. 1931, p. 191, § 1; Code 1933, § 9-404.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 130.

C.J.S. — 7 C.J.S., Attorney and Client, § 29 et seq.

ALR. — Practice of medicine, dentistry, or law through radio broadcasting stations, newspapers, or magazines, 114 ALR 1506.

Right of corporation to perform or to hold itself out as ready to perform functions in the nature of legal services, 157 ALR 282.

Activities of law clerks as illegal practice of law, 13 ALR3d 1137.

Nature of legal services or law-related services which may be performed for others by disbarred or suspended attorney, 87 ALR3d 279.

Modern status of law regarding solicitation of business by or for attorney, 5 ALR4th 866.

15-19-55. Certain solicitation prohibited.

It shall be unlawful for any person, corporation, or voluntary association to solicit legal employment on behalf of any attorney, firm, corporation, or organization where the attorney, firm, corporation, or organization would not himself or itself be authorized to engage in such solicitation. However, nothing in this article shall be construed to prohibit a person, association, or corporation lawfully engaged in the business of conducting a mercantile or collection agency or adjustment bureau from employing an attorney at law to give legal advice concerning, or to prosecute actions in court which relate to, the adjustment or collection of debts and accounts only. (Ga. L. 1931, p. 191, § 1; Code 1933, § 9-405.)

Cross references. — Standards for advertising and solicitation activities concerning prepaid legal services plans, § 33-35-12. Prohibition against giving advice to inmate by employee of penal institution regarding employment of attorney,

and prohibition against receipt by such employee of money paid as fees or otherwise to attorney representing inmate in criminal case, § 42-1-1.

JUDICIAL DECISIONS

Bar association's offer to represent persons involved with usurious moneylender not violative of section. — Local bar association's offer to represent, free of charge, persons caught in the toils of the usurious moneylender in defending against such illegal exactions, and to represent those people in bringing actions to recover amounts illegally paid under loan contracts, was not a violation of this section. Gunnels v. Atlanta Bar Ass'n, 191 Ga. 366, 12 S.E.2d 602 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, §§ 44, 45, 73 et seq.

C.J.S. — 7 C.J.S., Attorney and Client, §§ 19, 47.

ALR. — Services incident to membership in automobile "association" as practice of law or as ground for discipline of attorney who conducts the "association" or is connected therewith, 106 ALR 548.

What amounts to practice of law, 111 ALR 19; 125 ALR 1173; 151 ALR 781.

Practice of medicine, dentistry, or law through radio broadcasting stations, newspapers, or magazines, 114 ALR 1506.

Right of corporation to perform or to hold itself out as ready to perform functions in the nature of legal services, 157 ALR 282.

Heir-hunting, 171 ALR 351.

Maintenance of lawyer reference system by organization having no legal interest in proceedings, 11 ALR3d 1206.

Operations of collection agency as unauthorized practice of law, 27 ALR3d 1152.

Lawyer publicity as breach of legal ethics, 4 ALR4th 306.

Modern status of law regarding solicitation of business by or for attorney, 5 ALR4th 866.

15-19-56. Penalty for prohibited conduct.

(a) Any person, corporation, or voluntary association violating Code Section 15-19-51, 15-19-53, 15-19-54, or 15-19-55 shall be guilty of a misdemeanor.

(b) Every officer, trustee, director, agent, or employee of a corporation or voluntary association who directly or indirectly engages in any of the acts prohibited in Code Section 15-19-51, 15-19-53, 15-19-54, or 15-19-55 or assists a corporation or voluntary association in performing the prohibited acts shall be guilty of a misdemeanor. The fact that the person is a duly and regularly admitted attorney at law shall not be held to permit or allow the corporation or voluntary association to do the acts prohibited in such Code sections, nor shall the fact be a defense upon the trial of any person mentioned therein for a violation of those Code sections. Nothing in this subsection shall prevent any court having jurisdiction from punishing the corporation or its officers for contempt. (Ga. L. 1931, p. 191, § 1; Code 1933, § 9-9903; Ga. L. 1975, p. 755, § 1.)

JUDICIAL DECISIONS

Legislative intent. — This section, which no longer controls the practice of law in Georgia, continues to be a valid and subsisting statute imposing criminal sanctions for the unauthorized practice of law described therein, and was enacted by the General Assembly to protect the public interest in aid of the judiciary's constitutional function. Huber v. State, 234 Ga. 357, 216 S.E.2d 73 (1975).

Imposition of penalty amounts to prohibition of contract made in violation of section. — General rule of law is that when the license required by the statute is for the protection of the public and to prevent improper persons from acting in a particular capacity, and is not for revenue purposes only, the imposition of the penalty amounts to a positive prohibition of a contract made in violation of the statute. Lowe v. Presley, 86 Ga. App. 328, 71 S.E.2d 730 (1952).

No private right of action. — Alleged contemnor, who claimed that an attorney signed a declaration related to a motion to hold the contemnor in contempt concerning events occurring two to four days before the attorney was licensed to practice law, could not assert a private right of action for the unauthorized practice of law against the attorney because Georgia law did not recognize such a right of action as the remedies for the unauthorized practice of law included criminal sanctions and allowing the state bar and certain bar organizations to pursue injunctive relief. Oswell v. Nixon, 275 Ga. App. 205, 620 S.E.2d 419 (2005).

Evidence sufficient to support conviction for unauthorized practice of law. — See Gaines v. State, 177 Ga. App. 795, 341 S.E.2d 252 (1986).

Company representation before board valid. — Agreement in which a company committed itself to represent a taxpayer's interests before the board of equalization was not void as constituting the unauthorized practice of law. Grand Partners Joint Venture I v. Realtax Resource, Inc., 225 Ga. App. 409, 483 S.E.2d 922 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, §§ 135, 136.

C.J.S. — 7 C.J.S., Attorney and Client, § 41.

ALR. — Right of one not admitted to practice, or unlicensed, to recover compensation for legal services, 4 ALR 1087; 118 ALR 646.

Practicing or pretending to practice law without authority as contempt, 36 ALR 533; 100 ALR 236.

Liability of attorney for services rendered to him by one not admitted to bar as affected by the fact that they amounted to practice of law by the latter, 90 ALR 288.

What amounts to practice of law, 151 ALR 781.

Right of corporation to perform or to hold itself out as ready to perform functions in the nature of legal services, 157 ALR 282.

Operations of collection agency as unauthorized practice of law, 27 ALR3d 1152.

Right of party litigant to defend or counterclaim on ground that opposing party or his attorney is engaged in unauthorized practice of law, 7 ALR4th 1146.

Unauthorized practice of law as contempt, 40 ALR6th 463.

15-19-57. Investigation of unauthorized practice of law.

The State Bar of Georgia, the Judicial Council of the State of Georgia, and all organized bar associations of this state are each authorized to inquire into and investigate:

(1) Any charges or complaints of unauthorized or unlawful practice of law;

(2) Reserved;

(3) Any charges or complaints that any person, in violation of Code Section 15-19-55 or rules promulgated by the Supreme Court, is orally or by writing, for a consideration then or afterwards to be charged or received by himself or another, offering or tendering to another person, without the solicitation of the person, the services of an attorney at law, resident or nonresident of this state, in order for the attorney to institute an action or represent the person in the courts of this or any other state or of the United States in the enforcement or collection by law of any claim, debt, or demand of the person against another or is suggesting or urging the bringing of such action; and

(4) Any charge or complaints that any person is engaged in the practice of seeking out and proposing to other persons that they present and urge through any attorney at law the collection of any claim, debt, or demand of such person against another. (Ga. L. 1946, p. 171, § 1; Ga. L. 2007, p. 47, § 15/SB 103; Ga. L. 2008, p. 324, § 15/SB 455.)

JUDICIAL DECISIONS

Authorization to investigate unauthorized practice of law. — Plaintiff's claim that O.C.G.A. § 15-19-57 authorized the illegal search and seizure by a private organization in violation of the Fourth Amendment had no merit because the provision merely authorized the State of Georgia and bar associations within the state to inquire into and investigate any charges or complaints of unauthorized or unlawful practice of law. Further, it was the county superior court and not the statute that authorized plaintiff's incarceration for contempt. Alyshah v. Georgia, No. 1:06-CV-0928-TWT, 2006 U.S. Dist. LEXIS 66546 (N.D. Ga. Sept. 1, 2006), aff'd, 230 Fed. Appx. 949 (11th Cir. Ga. 2007).

Cited in Dixon v. Georgia Indigent Legal Servs., Inc., 388 F. Supp. 1156 (S.D. Ga. 1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, §§ 135, 136.

C.J.S. — 7 C.J.S., Attorney and Client, § 40.

ALR. — Right of one not admitted to practice, or unlicensed, to recover compensation for legal services, 4 ALR 1087; 118 ALR 646.

Practicing or pretending to practice law without authority as contempt, 36 ALR 533; 100 ALR 236.

Power of court to conduct general investigation of practices of members of bar without charges against particular members, 60 ALR 860.

Offense of barratry; criminal aspects of champerty and maintenance, 139 ALR 620.

Modern status of law regarding solicitation of business by or for attorney, 5 ALR4th 866.

15-19-58. Injunctive relief; venue; procedure; other remedies not curtailed.

(a) Either the State Bar of Georgia, the Judicial Council of this state, or any organized bar association of this state is authorized to institute in the proper superior court of this state an action or actions seeking injunctive relief against any person, firm, or corporation, when it determines after investigation that such person, firm, or corporation:

(1) Is engaged in the unauthorized or unlawful practice of law;

(2) Reserved;

(3) In violation of Code Section 15-19-55 or rules promulgated by the Supreme Court, is orally or by writing, for a consideration then or afterwards to be charged or received by himself or another, offering or tendering to another person, without the solicitation of such other person, the services of an attorney at law, resident or nonresident of this state, in order for the attorney to institute an action or represent the person in the courts of this or any other state or of the United States in the enforcement or collection by law of any claim, debt, or demand of any such person against another or is suggesting or urging the bringing of the action; or

(4) Is engaged in the practice of seeking out and proposing to other persons that they present and urge through any attorney at law the collection of any claim, debt, or demand of such person against another.

(b) The venue of any action authorized by this Code section shall be determined by the constitutional and statutory provisions relating to cases in equity.

(c) The hearing, interlocutory or final, and the trial of actions authorized by this Code section shall be governed by the laws of this state relating to injunctions, as shall appeals from orders or judgments therein.

(d) In any action brought under this Code section, the final judgment, if in favor of the plaintiff, shall perpetually enjoin the defendant or defendants from the commission or continuance of the act or acts complained of. Restraining orders or temporary injunctions may be granted as in other cases in which injunctive relief is sought.

(e) This Code section and Code Section 15-19-57 shall not repeal or curtail any remedy provided in cases of unauthorized or unlawful practice of law, and nothing contained in these Code sections shall be construed as abridging the powers of the courts in such matters. (Ga. L. 1946, p. 171, §§ 2-6; Ga. L. 2007, p. 47, § 15/SB 103; Ga. L. 2008, p. 324, § 15/SB 455.)

Law reviews. — For note discussing problems with venue in Georgia, and proposing statutory revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

JUDICIAL DECISIONS

Standing to enjoin unauthorized practice of law. — This section grants standing to enjoin the unlawful or unauthorized practice of law only to the State Bar of Georgia, the judicial council, or any organized bar association of the state, and not to private citizens. Dixon v. Georgia Indigent Legal Servs., Inc., 388 F. Supp. 1156 (S.D. Ga. 1974), aff'd, 532 F.2d 1373 (5th Cir. 1976).

Pursuant to Ga. St. Bar R. 14-1.1 and 14.1-1.2, the power to regulate the unauthorized practice of law (UPL) resided in the state supreme court and the state bar association; thus, a private bar association lacked standing under Ga. St. Bar R. 14-2.1(a) and O.C.G.A. § 15-19-58(a) to bring a UPL suit against a title company. GRECCA, Inc. v. Omni Title Servs., Inc., 277 Ga. 312, 588 S.E.2d 709 (2003).

Alleged contemnor, who claimed that an attorney signed a declaration related to a motion to hold the contemnor in contempt concerning events occurring two to four days before the attorney was licensed to practice law, could not assert a private right of action for the unauthorized practice of law against the attorney because Georgia law did not recognize such a right of action as the remedies for the unauthorized practice of law included criminal sanctions and allowing the state bar and certain bar organizations to pursue injunctive relief. Oswell v. Nixon, 275 Ga. App. 205, 620 S.E.2d 419 (2005).

O.C.G.A. §§ 15-1-8, 15-6-4, and 15-19-58 did not conflict with one another so as to be unconstitutional because O.C.G.A. § 15-1-8 provided that judges should not be disqualified from sitting in a proceeding because the judge was a policyholder of any mutual insurance company, O.C.G.A. § 15-6-4 provided for qualifications for state superior court judges, and O.C.G.A. § 15-19-58 allowed the state bar to seek injunctive relief against parties engaging in the unauthorized practice of law. Alyshah v. Georgia, No. 1:06-CV-0928-TWT, 2006 U.S. Dist. LEXIS 66546 (N.D. Ga. Sept. 1, 2006), aff'd, 230 Fed. Appx. 949 (11th Cir. Ga. 2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorneys at Law, § 135 et seq.

C.J.S. — 7 C.J.S., Attorney and Client, §§ 18, 40, 42.

ALR. — Practicing or pretending to practice law without authority as contempt, 36 ALR 533; 100 ALR 236.

15-19-59. Authorized actions by brokers, associates, and salepersons.

(a) As used in this Code section, the terms "associate broker," "broker," and "salesperson" shall have the same meanings as set forth in Code Section 43-40-1.

(b) A broker, associate broker, or salesperson licensed pursuant to Chapter 40 of Title 43, a seller of real property or the employee of a seller of real property, or an employee of a property management company engaged in the leasing or management of commercial or multifamily properties may:

(1) Provide information and advice to their principals, clients, and customers in matters involving the listing, management, sale, purchase, exchange, renting, lease, option, or other conveyance of any real estate or the improvements thereon;

(2) Prepare special stipulations to forms that were prepared by an attorney in connection with the listing, sale, purchase, exchange, renting, lease, or option for any real estate or the improvements thereon;

(3) Provide legal forms prepared by an attorney to their principals, clients, and customers; and

(4) Complete legal instruments prepared by an attorney for their principals, clients, and customers.

(c) This Code section shall not authorize a broker, associate broker, or salesperson to close a real estate transaction or to express, render, or issue a legal opinion as to the status of the title to real or personal property. No person or voluntary association, other than an active member in good standing of the State Bar of Georgia, shall close a real estate transaction or express, render, or issue a legal opinion as to the status of the title to real or personal property.

(d) This Code section shall not prevent the activities authorized by Code Section 15-19-52, 15-19-53, 15-19-54, or 43-40-25.1. (Code 1981, § 15-19-59, enacted by Ga. L. 2015, p. 550, § 1/HB 153.)

Effective date. — This Code section became effective July 1, 2015.

15-19-60. Consumer action for damages for violations.

Any consumer who is a party to a one-to-four family residential real estate transaction or a consumer debtor or a trustee of a consumer debtor in a bankruptcy case that involves a one-to-four family residential real property who is damaged by a violation of this article or a violation of the Supreme Court's rules or opinions governing the unlicensed practice of law shall be entitled to maintain a civil action to recover damages, treble damages, reasonable attorney's fees, and expenses of litigation. A claim for a violation of this Code section shall be asserted in an individual action only and shall not be the subject of a class action under Code Section 9-11-23. This Code section shall not prevent the activities authorized by Code Section 15-19-52, 15-19-53, 15-19-54, 15-19-59, or 43-40-25.1. (Code 1981, § 15-19-60, enacted by Ga. L. 2015, p. 550, § 1/HB 153.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 20

LAW SCHOOL LEGAL AID AGENCIES

Sec.
15-20-1. Short title.
15-20-2. Declaration of purpose.
15-20-3. Definitions.
15-20-4. Application to establish legal aid agency; separate application for each county.
15-20-5. Showing required.
15-20-6. Entry of order; continuing jurisdiction of superior court judge.
15-20-7. Malpractice insurance.
15-20-8. Participants in legal aid; certification by dean; oath.
15-20-9. Filing of dean's certificate; duration of authority to practice legal aid; termination of authority.

Cross references. — Use of third-year law students and law school staff instructors as legal assistants in criminal proceedings, § 15-18-22.

Law reviews. — For article, "See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum," see 26 Ga. St. U.L. Rev. 361 (2010).

15-20-1. Short title.

This chapter may be known and cited as "The Law School Legal Aid Agency Act of 1967." (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1.)

RESEARCH REFERENCES

ALR. — Propriety and effect of law students acting as counsel in court suit, 3 ALR4th 358.

Court appointment of attorney to represent, without compensation, indigent in civil action, 52 ALR4th 1063.

15-20-2. Declaration of purpose.

It is in the public interest to promote the availability of legal aid to indigent persons and in connection therewith to encourage the establishment and operation of legal aid agencies by law schools in this state and the utilization of the services of third-year law students in the legal aid agencies as a form of legal intern training and service that will provide competent and professional legal counsel to indigent persons. (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1.)

Cross references. — Programs for defense of indigents in criminal cases, T. 17, C. 12.

Law reviews. — For article discussing the rise of clinical legal education programs, see 9 Ga. St. B.J. 443 (1973). For

article, "Providing Legal Services to Prisoners," see 8 Ga. L. Rev. 363 (1974).

15-20-3. Definitions.

As used in this chapter, the term:

(1) "Approved law school legal aid agency" means an established or proposed department, division, program, or course in a law school under the supervision of at least one full-time member of the school's faculty or staff who has been admitted and licensed to practice law in this state, conducted regularly and systematically to render legal services to indigent persons, the purpose, method, and content of which are approved by a judge of the superior court as provided in this chapter. When a law school legal aid agency has been approved as provided in this chapter, it is contemplated that the resources of the legal aid agency, including the services of third-year law students regularly enrolled therein, will in their entirety provide competent and professional legal counsel to the indigent persons served thereby.

(2) "Indigent person" means a person financially unable to employ the legal services of an attorney as determined by a standard of indigency established by a judge of the superior court as provided in this chapter.

(3) "Law school" means a law school in this state which is approved by the American Bar Association or which is authorized to operate under Code Section 20-3-250.8 or which was chartered and began operation in this state prior to February 10, 1937, and continued in operation in this state on March 28, 1967.

(4) "Legal aid" means legal services of a civil, criminal, or other nature rendered for or on behalf of an indigent person without charge to the person.

(5) "Practice of legal aid" means participation by a third-year law student in an approved legal aid agency and, as an adjunct thereof, under its sponsorship and solely in connection therewith, the rendition of legal services to indigent persons without charge to the persons. When a third-year law student has been authorized to practice legal aid under this chapter, he shall, to the extent involved in his participation in the legal aid agency, have the authority to practice law as if he were admitted and licensed to practice in this state, except that all pleadings and other entries of record must be signed by a licensed attorney and, in the conduct of a trial, a licensed attorney must be present.

(6) "Staff instructor" means a full-time professional staff employee of a law school in this state who has been admitted to the bar of

another state, but who has not yet been admitted to the bar of this state, and who is actively engaged in the work of an approved law school legal aid agency.

(7) "Third-year law student" means a student regularly enrolled and in good standing in a law school in this state who has satisfactorily completed at least two-thirds of the requirements for a first professional degree in law (J.D. or its equivalent) in not less than four semesters or six quarters of residence. (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1; Ga. L. 1990, p. 1166, § 2; Ga. L. 1994, p. 97, § 15.)

OPINIONS OF THE ATTORNEY GENERAL

Appearance of certified students at administrative hearings without accompanying counsel. — While persons appearing before the Department of Public Safety hearing officers on the issue of driver's license revocations generally must either represent themselves or be represented by licensed attorneys employed by those individuals, when such persons are indigents those individuals may be accompanied by certified, third-year law students working through an approved legal aid society, who may offer the individuals legal advice during the hearings; since such proceedings are administrative hearings, and not trials, such certified law students may appear at the hearings without licensed counsel accompanying the students. 1972 Op. Att'y Gen. No. 72-54.

15-20-4. Application to establish legal aid agency; separate application for each county.

(a) A law school in this state which has established a legal aid agency or proposes to establish a legal aid agency may obtain approval thereof by applying for that purpose to a judge of the superior court in the county in which the legal aid agency is operating or proposes to operate.

(b) The application shall be made in the name of the dean of the law school. It shall request the judge to approve the legal aid agency conducted or proposed by the law school and to establish a standard of indigency appropriate to that county for determining the persons who may be served by the legal aid agency. It shall also include such information and data concerning the law school's legal aid agency and the appropriate standard of indigency as will enable the judge to make the approval and establish the standard as contemplated hereunder.

(c) A law school must obtain approval by a separate application in each county in which its legal aid agency is operating or proposes to operate, and any authority to practice legal aid allowed under this chapter shall be limited to the county for which approval of the legal aid agency has been obtained as provided in this Code section. (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1; Ga. L. 1990, p. 8, § 15; Ga. L. 1994, p. 97, § 15.)

RESEARCH REFERENCES

ALR. — Propriety and effect of law students as counsel in court suit, 3 ALR4th 358.

15-20-5. Showing required.

Upon receipt of an application under Code Section 15-20-4, the judge of the superior court may require such showing and otherwise give the matter such direction as he deems necessary to satisfy himself that the application is complete and in order, that the purposes of Code Section 15-20-2 are served, and that the requirements contemplated in paragraph (1) of Code Section 15-20-3 are met. He may also require such showing and otherwise give the matter such direction as he deems necessary to establish a standard of indigency appropriate to that county. (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1.)

15-20-6. Entry of order; continuing jurisdiction of superior court judge.

When the judge of the superior court has determined that the application warrants approval and has established a standard of indigency, he shall enter an appropriate order. The order shall retain a continuing jurisdiction over these matters. At any time the judge may require a review thereof to assure himself that the purposes of this chapter are being served and that the privileges accorded hereunder are not being abused or used for other purposes. (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1.)

15-20-7. Malpractice insurance.

In the order approving a legal aid agency the judge of the superior court shall require the applicant to procure and maintain an appropriate coverage of malpractice liability insurance. (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1.)

15-20-8. Participants in legal aid; certification by dean; oath.

When a law school legal aid agency has been approved as contemplated in Code Section 15-20-6, a third-year law student or staff instructor regularly enrolled may be certified as a participant therein and authorized to practice legal aid as an adjunct thereof in such form and manner as the judge of the superior court may prescribe, taking care that the requirements of this chapter and the good moral character of the student or instructor are properly certified by the dean of the law

school. Before entering an order authorizing him to practice legal aid, the judge shall further require of the student or instructor an oath similar to the oath required by an attorney. (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1.)

15-20-9. Filing of dean's certificate; duration of authority to practice legal aid; termination of authority.

As to each third-year law student or staff instructor authorized to practice legal aid, there shall be kept on file in the office of the clerk of the superior court in the county where such authority is to be exercised the dean's certificate, the student's and instructor's oaths, and the judge's order as contemplated under Code Section 15-20-8. The authority to practice legal aid, as allowed under this chapter, shall extend for no longer than one year. If during this period any change occurs in the status of the student or instructor at the law school in which he was enrolled at the time of his original certification, that is, if the student or instructor ceases his enrollment at the law school, ceases his enrollment in that law school's legal aid agency, or otherwise is expelled or suspended from the law school, then any authority to practice legal aid shall terminate and be revoked. (Code 1933, § 9-401.1, enacted by Ga. L. 1967, p. 153, § 1; Ga. L. 1970, p. 336, § 1; Ga. L. 1990, p. 8, § 15.)

RESEARCH REFERENCES

ALR. — Propriety and effect of law students acting as counsel in court suit, 3 ALR4th 358.

CHAPTER 21

PAYMENT AND DISPOSITION OF FINES AND FORFEITURES

Article 1

General Provisions

Sec.

15-21-1. Time of payment of fines.
15-21-2. Payment into county treasury of fines and bond forfeitures.
15-21-3. Maintenance of moneys from fines and bond forfeitures in county treasury.
15-21-4. Distribution of fines and bond forfeitures generally; liability of the clerk of the court as to distribution.
15-21-5. Procedure for filing and payment of claims of officers of court when defendant acquitted or person liable is insolvent generally.
15-21-6. Procedure for filing and payment of claims of officers of county courts, notaries public, justices of the peace, and constables generally [Repealed].
15-21-7. Report by county treasurer to grand jury as to fines and bond forfeitures received and disbursed; compensation of treasurer; effect of Code section upon local laws.
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Article 2

Compensation of Justices of the Peace and Constables in Certain Cases

Sec.

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Article 3

Limitation Period and Rules for Claims Against Fine and Bond Forfeiture Fund

15-21-50. Limitation period for claims against fine and bond forfeiture fund for payment of costs or fees; extension of limitation period.
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15-21-55. Disposition of funds remaining after claims against fine and bond forfeiture fund paid or barred by limitation.
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Article 4

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15-21-70. Short title.

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15-21-143. Appointment of members and personnel; agencies.
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Safe Harbor for Sexually Exploited Children Fund

15-21-200. (For effective date, see note.) Authority.
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15-21-202. (For effective date, see note.) Commission established; fund creation; disbursement of proceeds.
15-21-203. (For effective date, see note.) Commission membership; administration.
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15-21-205. (For effective date, see note.) Commission meetings and responsibilities.
15-21-206. (For effective date, see note.) Recommendations authorized.
15-21-207. (For effective date, see note.) Funding sources.
15-21-208. (For effective date, see note.) Financial penalty; collection.
15-21-209. (For effective date, see note.) State operation assessment against adult entertainment establishments; determination of obligation; use of funds; administration.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-21-1. Time of payment of fines.

Every fine imposed by a court under the authority of this Code shall be paid immediately or within such reasonable time as the court may

grant. (Laws 1833, Cobb's 1851 Digest, p. 837; Code 1863, § 4541; Code 1868, § 4561; Code 1873, § 4655; Code 1882, § 4655; Penal Code 1895, § 1084; Penal Code 1910, § 1111; Code 1933, § 27-2901.)

JUDICIAL DECISIONS

Limit beyond which imprisonment shall not extend if fine not paid. — To enforce the payment of a fine, the court may imprison the defendant and it is not error to express in the sentence a limit beyond which the imprisonment shall not extend, if the fine is not paid. Brock v. State, 22 Ga. 98 (1857).

Imprisonment is not part of penalty. McMeekin v. State, 48 Ga. 335 (1873).

Effect of alternative sentence. — If a sentence with the alternative of a fine has been imposed in a misdemeanor case, the defendant has the right, as a matter of law, to pay, within a reasonable time, the money required by that part of the sentence. Dunaway v. Hodge, 127 Ga. 690, 55 S.E. 483 (1906).

Discharge upon payment of fine. — Upon payment or tender of a fine to the sheriff of the county within a reasonable time, the defendant is entitled to be discharged from any further custody under the sentence. Abram v. Maples, 10 Ga. App. 137, 72 S.E. 932 (1911).

Sheriff discharging prisoner before payment. — If the sheriff discharges the prisoner, taking the promise of another to pay the fine, the sheriff could not afterward hold the defendant or arrest the defendant for not paying the fine. By making this arrangement the sheriff became liable for the amount of the fine, and must look to the person on whose promise the sheriff acted. The defendant was not liable to an arrest and imprisonment for a failure to pay. Williams v. Mize, 72 Ga. 129 (1883); Howard v. Tucker, 12 Ga. App. 353, 77 S.E. 191 (1913).

Effect of pardon on fine. — If a defendant in a criminal case gave a promissory note to the solicitor general (now district attorney) for the fine imposed on defendant, and was afterwards pardoned by the Governor and the fine remitted, and the note was inappropriate in the manner prescribed by law, such pardon and remission of the fine discharged the defendant from the payment of the note, even if the note had been sued and judgment obtained upon the note before the fine was remitted. Parrott v. Wilson, 51 Ga. 255 (1874).

Cited in Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Moore v. Lawrence, 192 Ga. 441, 15 S.E.2d 519 (1941); Reid v. State, 116 Ga. App. 640, 158 S.E.2d 461 (1967).

RESEARCH REFERENCES

Am. Jur. 2d. — 21A Am. Jur. 2d, Criminal Law, § 874 et seq.

C.J.S. — 36A C.J.S., Fines, §§ 4, 6.

ALR. — Validity of obligation to pay or secure a fine or penalty, 29 ALR 7.

Indigency of offender as affecting validity of imprisonment as alternative to payment of fine, 31 ALR3d 926.

15-21-2. Payment into county treasury of fines and bond forfeitures.

(a)(1) The clerks of the several courts shall pay into the county treasury of the county where the court is held all moneys arising from fines and bond forfeitures collected by them and, upon failure to do so, shall be subject to rule and attachment as in the case of defaulting sheriffs.

(2) The provisions of paragraph (1) of this subsection shall not apply to the remainder of any fines, after costs, imposed for violation of any traffic offense provided in or authorized by Chapter 6 of Title 40 on an urban interstate system if the arrest or citation in such case was made or issued by a member of the Uniform Division of the Department of Public Safety's motorcycle enforcement unit, in which case such remainder shall be remitted to the Department of Public Safety and used for the maintenance and enhancement of the department's motorcycle enforcement program.

(3) As used in this subsection, the term "urban interstate system" means a portion of the national system of interstate and defense highways which:

(A) Is located entirely within any part of this state; and

(B) Includes a single numbered interstate highway which forms a closed loop or perimeter.

Where these conditions exist, the urban interstate system shall consist of the interstate highway constituting the closed loop or perimeter and all interstate highways or portions thereof located within such loop or perimeter, not including any portion of any interstate highway outside of the loop or perimeter.

(b) No officer shall be required to pay any money into the treasury until all the legal claims on the funds held and owned by the officer bringing the money into court in the particular case by which the funds for distribution were brought into court have been allowed and paid. (Ga. L. 1876, p. 108, § 1; Ga. L. 1878-79, p. 189, § 1; Code 1882, § 4655a; Penal Code 1895, § 1089; Penal Code 1910, § 1116; Code 1933, § 27-2902; Ga. L. 1983, p. 884, § 5-1; Ga. L. 1984, p. 842, § 2; Ga. L. 2006, p. 159, § 1/HB 1209; Ga. L. 2007, p. 47, § 15/SB 103; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in paragraph (a)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 2006, p. 159, § 3/HB 1209, not codified by the General Assembly, as amended by Ga. L. 2007, p. 47, § 15A/SB 103, and as amended by Ga. L. 2010, p. 105, §§ 2-1 and 2-2/HB 981, provides: "This Act shall become effective on July 1, 2006."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Administrative rules and regulations. — Motorcycle Enforcement Unit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-33.

JUDICIAL DECISIONS

Duty of county treasurer to receive surplus of fund and hold surplus for distribution. — Bank acting as county depository becomes a quasi-public officer. It is therefore the duty of such bank, acting as county treasurer, to receive the surplus of the fine and forfeiture fund and hold the surplus for distribution as required by law. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

Effect of payment of moneys to county treasurer. — While it was the duty of the solicitor (now district attorney) to collect all moneys arising from fines and forfeitures, yet if the solicitor states in the solicitor's petition that the solicitor has a surplus which the solicitor (now district attorney) desires to pay over to the county treasurer, the solicitor (now district attorney) cannot complain because the clerk and the sheriff paid over to the county treasurer stated amounts which should have been turned over to the solicitor (now district attorney) and by the solicitor (now district attorney) paid to the county treasurer. This is true for the reason that equity will not require a person to do a useless act. Terrell v. Jolly, 203 Ga. 821, 48 S.E.2d 517 (1948).

Money from fund to which county entitled must be paid into treasury. — Any money from the fine and forfeiture fund to which the county commissioners might be entitled must be paid to the county treasury. The rule must therefore ask that the money be itself paid into the treasury, instead of directly to the officers whose duty it is to bring the rule on behalf of the county. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

Contributions to pension fund made with fines and fees were county funds. — Court fines and forfeitures were county funds and, thus, the payment of those monies into a court clerk's state retirement plan were contributions made with county funds; the county's determination to exclude the clerk from the county's pension plan, based on the county's decision that the county should contribute to each constitutional officer's retirement plan only once, did not violate equal protection since the decision was based on a rational distinction between the various constitutional officers, and furthered the legitimate governmental purpose of equalizing the county's pension contributions and fostering financial responsibility in the funding of the county's retirement plans. Morgan County Bd. of Comm'rs v. Mealor, 280 Ga. 241, 626 S.E.2d 79 (2006).

Cited in Gordon County Comm'rs v. Harris, 81 Ga. 719, 8 S.E. 427 (1888); Bartlett v. Brunson, 115 Ga. 459, 41 S.E. 601 (1902); Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947); Walden v. Bale, 78 Ga. App. 226, 50 S.E.2d 844 (1948); Walden v. Camp, 206 Ga. 593, 58 S.E.2d 175 (1950).

OPINIONS OF THE ATTORNEY GENERAL

Responsibility for collecting and distributing fines levied by courts. — District attorney and the state court solicitor are ultimately charged with the responsibility of collecting and distributing the fines levied by their respective courts. 1974 Op. Att'y Gen. No. U74-6.

By virtue of the 1984 legislation, the General Assembly intended to remove from the district attorney any responsibility for either the collection of fines, forfeitures, and costs levied in criminal cases, or the disbursement of such money into the county treasury. This responsibility now lies with the clerk of court. 1985 Op. Att'y Gen. No. U85-20.

Duties of those collecting fines and forfeitures. — For a discussion of the respective duties of the prosecuting attorney, sheriff, and clerk of court in the collection of fines and forfeitures in criminal cases, see 1983 Op. Att'y Gen. No. U83-62.

Separate account for funds from forfeitures and fines. — All funds in criminal procedures from forfeitures and fines should be paid into the county treasury and kept by the treasurer in a sepa-

rate account from the general county funds; the clerk of the superior court should not be paid out of the general funds of the county, but should only be paid out of the funds held by the county treasurer in the account from forfeitures and fines. 1950-51 Op. Att'y Gen. p. 255.

Disposition of money that would have been applied to clerk's fees. — To the extent that moneys in fines and forfeitures fund would have been paid to clerk as fees prior to clerk's being placed upon a salary, these moneys must be paid into the county treasury regularly, and no court order is required. 1982 Op. Att'y Gen. No. U82-39.

Payment of forfeited bonds into county treasury. — Forfeited bond in habeas corpus proceedings is paid into county treasury. 1945-47 Op. Att'y Gen. p. 106.

Funds from bond forfeiture cannot be used to compensate prosecuting witness in bad check case; such funds must be paid into the county treasury and administered in accordance with former Code 1933, §§ 27-2902, 27-2904 and 27-2905 (see now O.C.G.A. §§ 15-21-2, 15-21-3 and 15-21-5). 1970 Op. Att'y Gen. No. U70-197.

Responsibility for costs in criminal cases. — Ultimate responsibility for costs in a criminal case will fall upon the defendant, the prosecutor, or the fine and forfeiture fund, depending upon the circumstances. 1971 Op. Att'y Gen. No. U71-42.

Probate court fines paid into insolvent cost fund. — After payment of all costs, fines collected in probate court go into insolvent cost fund. 1952-53 Op. Att'y Gen. p. 38.

Expense of supervising probationers may not be offset by withholding collection fee. — Since expenses of Department of Offender Rehabilitation (now Department of Corrections) in supervising probationers are not a proper cost of prosecution, the department cannot withhold a collection fee to offset these costs from fines which the department collects. 1981 Op. Att'y Gen. No. 81-100.

Satisfaction of claims on fund other than county's claims. — To extent that fines and forfeitures fund may be subject to legal claims other than those of the county, the fund is to be held until such claims are satisfied; the satisfaction of such claims is made by order of the judge of superior court. 1982 Op. Att'y Gen. No. U82-39.

Construction with § 47-17-60. — Ga. L. 1950, p. 50, § 10 (see now O.C.G.A. § 47-17-60) is not inconsistent with former Code 1933, § 27-2902 (see now O.C.G.A. § 15-21-2). 1950-51 Op. Att'y Gen. p. 131.

Disposition of fines in cases transferred from municipal court to superior court. — Municipality cannot collect and retain fines resulting from cases transferred from municipal court to superior court pursuant to O.C.G.A. § 40-13-23 since fines imposed by the superior court must be paid into the county treasury. 1984 Op. Att'y Gen. No. U84-44.

Since O.C.G.A. §§ 15-21-2 and 15-21-52 mandate that all fines collected by county courts be paid into the county treasury, a municipality and county cannot contract to provide for the division of moneys received as fines by the superior court from cases transferred under O.C.G.A. § 40-13-23. 1984 Op. Att'y Gen. No. U84-44.

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Forfeitures and Penalties, §§ 1 et seq., 15 et seq.

C.J.S. — 36A C.J.S., Fines, §§ 3, 4, 19. 37 C.J.S., Forfeitures, §§ 2, 3, 4, 45 et seq.

15-21-3. Maintenance of moneys from fines and bond forfeitures in county treasury.

The moneys arising from fines and bond forfeitures paid into the county treasury shall be kept separate and distinct from the county

funds arising from other sources, and distinct and separate accounts of such funds shall also be kept by the county treasurer on the basis of the court from which the funds are received. (Ga. L. 1876, p. 108, § 2; Code 1882, § 4655c; Penal Code 1895, § 1091; Penal Code 1910, § 1118; Code 1933, § 27-2904; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" near the beginning of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Mandamus is remedy for violation of section. — If, in violation of the express provisions of this section, no separate account of funds arising from the fines and forfeitures was kept, but the fund designed for the payment of insolvent costs was mingled with the general funds of a county, and more than $3,000.00 arising from fines and forfeitures which was subject to orders for insolvent costs, approved by the judge of the superior court, was diverted into the general fund, mandamus affords a proper remedy; and in such circumstances the judge of the superior court did not err in granting a mandamus absolute, requiring that all moneys coming into the treasury of the county should be applied to the payment of the insolvent orders of the petitioner until the orders were paid in full. Citizens Bank v. Newton, 180 Ga. 860, 181 S.E. 171 (1935).

No provision authorizing payment of officers' fees from fund if defendant able to pay costs. — Sheriff, the clerk of the superior court, and the solicitor general (now district attorney) are all officers of the court, and are entitled to receive their fees from the fine and forfeiture fund in cases if the defendants have been acquitted, or if the persons liable by law for the payment of the costs are unable to pay the costs; but there is no provision of law authorizing the payment of these fees from this fund in cases where the convicted defendant is able to pay the costs. Pound v. Faulkner, 193 Ga. 413, 18 S.E.2d 749 (1942).

Cited in Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947); Walden v. Bale, 78 Ga. App. 226, 50 S.E.2d 844 (1948); Walden v. Camp, 206 Ga. 593, 58 S.E.2d 175 (1950).

OPINIONS OF THE ATTORNEY GENERAL

Payment of forfeited bonds into county treasury. — All funds in criminal procedures from forfeitures and fines should be paid into county treasury and kept by the treasurer in a separate account from the general county funds; the clerk of the superior court should not be paid out of the general funds of the county, but should only be paid out of the funds held by the county treasurer in the account from forfeitures and fines. 1950-51 Op. Att'y Gen. p. 255.

Funds from bond forfeiture cannot be used to compensate a prosecuting witness in a bad check case; such funds must be paid into the county treasury and administered in accordance with former Code 1933, §§ 27-2902, 27-2904, and 27-2905 (see now O.C.G.A. §§ 15-21-2, 15-21-3, and 15-21-5). 1970 Op. Att'y Gen. No. U70-197.

Probate court fines paid into insolvent cost fund. — After payment of all costs, fines collected in probate court go into insolvent cost fund. 1952-53 Op. Att'y Gen. p. 38.

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Forfeitures and Penalties, §§ 15 et seq., 32, 35.

C.J.S. — 36A C.J.S., Fines, §§ 6, 19. 37 C.J.S., Forfeitures, §§ 2, 3, 4, 45 et seq.

15-21-4. Distribution of fines and bond forfeitures generally; liability of the clerk of the court as to distribution.

All moneys arising from fines and bond forfeitures shall, at each term of the court, be distributed by the clerk of the court under order of the court to such persons and according to the priorities prescribed by law; and, upon failure to do so, the clerk shall be subject to a rule at the instance of any party aggrieved. (Ga. L. 1878-79, p. 189, § 2; Code 1882, § 4655b; Penal Code 1895, § 1090; Penal Code 1910, § 1117; Code 1933, § 27-2903; Ga. L. 1984, p. 842, § 3; Ga. L. 1985, p. 149, § 15; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" near the beginning of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Effect of payment of moneys to county treasurer. — While it was the duty of the solicitor (now district attorney) to collect all moneys arising from fines and forfeitures, yet if the solicitor (now district attorney) states in the solicitor's petition that the solicitor (now district attorney) has a surplus which the solicitor (now district attorney) desires to pay over to the county treasurer, the solicitor cannot complain because the clerk and the sheriff paid over to the county treasurer stated amounts which should have been turned over to the solicitor (now district attorney) and by the solicitor (now district attorney) paid to the county treasurer. This is true for the reason that equity will not require a person to do a useless act. Terrell v. Jolly, 203 Ga. 821, 48 S.E.2d 517 (1948).

Cited in Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947); Walden v. Camp, 206 Ga. 593, 58 S.E.2d 175 (1950); Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953); Ivester v. Mozeley, 89 Ga. App. 578, 80 S.E.2d 197 (1954).

OPINIONS OF THE ATTORNEY GENERAL

Responsibility for collecting and distributing fines levied by courts. — District attorney and the state court solicitor (now district attorney) are ultimately charged with the responsibility of collecting and distributing the fines levied by their respective courts. 1974 Op. Att'y Gen. No. U74-6.

Duties of those collecting fines and forfeitures. — For a discussion of the respective duties of the prosecuting attorney, sheriff, and clerk of court in the collection of fines and forfeitures in criminal cases, see 1983 Op. Att'y Gen. No. U83-62.

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Forfeitures and Penalties, §§ 1, 4, 5, 17 et seq.

C.J.S. — 36A C.J.S., Fines, § 19. 37 C.J.S., Forfeitures, §§ 39, 41.

15-21-5. Procedure for filing and payment of claims of officers of court when defendant acquitted or person liable is insolvent generally.

Any officer having a claim against the fine and bond forfeitures fund for insolvent costs, or in cases where defendants have been acquitted, if the same accrued in the superior court, or a court of inquiry prior to indictment, shall present to the judge of the superior court an itemized bill of the costs claimed. If the bill of costs is approved by the judge of the superior court, he shall order the bill entered on the minutes of the court; and the order shall operate as a warrant drawn upon the county treasury, to be paid by the county treasurer or other proper county officer or officers in charge of the fiscal affairs of the county out of any fines and bond forfeitures in the treasury received from the superior court. (Ga. L. 1876, p. 108, § 3; Code 1882, § 4655d; Penal Code 1895, § 1092; Penal Code 1910, § 1119; Code 1933, § 27-2905; Ga. L. 2015, p. 693, §§ 3-32, 3-33/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeitures fund" for "fine and forfeitures fund" near the beginning of the first sentence and substituted "fines and bond forfeitures" for "fines and forfeitures" near the end of the second sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Officer with claim should present itemized statement of costs. — Law contemplates that an officer having a claim against an insolvent costs fund should present an itemized statement of costs before being approved. Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Claims of officers for costs due in transferred cases. — Officers of the superior court have no lien or claim on account of insolvent costs due the officers in cases transferred from the superior to the county court, upon fines in the county treasury arising in the county upon other cases transferred from the superior court. Hardwick v. Burke, 113 Ga. 999, 39 S.E. 433 (1901).

All fines imposed required to be paid over to county treasurer. — All fines imposed by a judge of the county court upon persons convicted of a violation of the laws of this state are required to be paid over to the county treasurer. Overstreet v. Rawlings, 106 Ga. 793, 32 S.E. 855 (1899).

No provision authorizing payment of fees from fund if defendant able to pay costs. — Officers of the court are entitled to receive their fees from the fine and forfeiture fund in cases when the defendants have been acquitted, or when

the persons liable by law for the payment of the costs are unable to pay the costs; but there is no provision of law authorizing the payment of these fees from this fund in cases when the convicted defendant is able to pay the costs. Pound v. Faulkner, 193 Ga. 413, 18 S.E.2d 749 (1942).

Effect of valid order approving cost list. — If three different judges of the superior court approved an itemized bill of cost claimed by officers of the court presenting the bill for approval, in order to nullify the approval thus made, all three orders approving the cost list would have to be invalid; and if any one of the orders is a valid order, the other two could be disregarded as the cost list thus approved would still stand approved. Banks County v. Stark, 212 Ga. 283, 92 S.E.2d 11 (1956).

Order of court for costs is special judgment. — While an order of a court for insolvent costs is a judgment when placed on the minutes of the court, it is not such a judgment as contemplated under former Code 1933, §§ 110-1001, 110-1002 and 110-1003 (see now O.C.G.A. §§ 9-12-60 and 9-12-61). Walden v. Bale, 78 Ga. App. 226, 50 S.E.2d 844 (1948).

Cited in Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Walden v. Camp, 206 Ga. 593, 58 S.E.2d 175 (1950).

OPINIONS OF THE ATTORNEY GENERAL

Duties of those collecting fines and forfeitures. — For a discussion of the respective duties of the prosecuting attorney, sheriff, and clerk of court in the collection of fines and forfeitures in criminal cases, see 1983 Op. Att'y Gen. No. U83-62 (rendered prior to 1984 amendment of § 15-21-2).

Payment of forfeited bonds into county treasury. — Funds from bond forfeiture cannot be used to compensate prosecuting witness in bad check case; such funds must be paid into the county treasury and administered in accordance with former Code 1933, §§ 27-2902, 27-2904, and 27-2905 (see now O.C.G.A. §§ 15-21-2, 15-21-3, and 15-21-5). 1970 Op. Att'y Gen. No. U70-197.

RESEARCH REFERENCES

Am. Jur. 2d. — 21A Am. Jur. 2d, Criminal Law, § 874 et seq. 36 Am. Jur. 2d, Forfeitures and Penalties, § 15 et seq.

C.J.S. — 36A C.J.S., Fines, §§ 2, 19. 37 C.J.S., Forfeitures, §§ 1, 6, 7, 8, 10 et seq, 39, 41. 80 C.J.S., Sheriffs and Constables, §§ 268 et seq., 281.

ALR. — Exception as regards payments to officers of court to rule preventing recovery back of payments made under mistake of law, 111 ALR 637.

15-21-6. Procedure for filing and payment of claims of officers of county courts, notaries public, justices of the peace, and constables generally.

Reserved. Repealed by Ga. L. 1983, p. 884, § 5-2, effective July 1, 1983.

Editor's notes. — This Code section was based on Ga. L. 1876, p. 108, § 4; Ga. L. 1880-81, p. 86, § 1; and Ga. L. 1981, Ex. Sess., p. 8.

15-21-7. Report by county treasurer to grand jury as to fines and bond forfeitures received and disbursed; compensation of treasurer; effect of Code section upon local laws.

(a) The county treasurer shall report to the grand jury the amounts of fines and bond forfeitures received by him and to whom disbursed for the period of six months preceding the report and shall receive as his compensation 2 ½ percent on the amounts paid out by him.

(b) Nothing in subsection (a) of this Code section shall affect the distribution of funds arising from fines and bond forfeitures or the compensation of county treasurers as regulated by any local law. (Ga. L. 1876, p. 108, § 5; Code 1882, §§ 4655f, 4655g; Penal Code 1895, §§ 1094, 1095; Penal Code 1910, §§ 1121, 1122; Code 1933, §§ 27-2907, 27-2908; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsections (a) and (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Cited in Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947); Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Forfeitures and Penalties, § 15 et seq.

C.J.S. — 36A C.J.S., Fines, §§ 3, 6, 8, 13. 37 C.J.S., Forfeitures, §§ 1, 6, 7, 8, 10 et seq., 39, 41. 67 C.J.S., Officers and Public Employees, §§ 296, 297, 318 et seq.

15-21-8. Applicability and effect of Code Sections 15-21-2 through 15-21-7.

Code Sections 15-21-2 through 15-21-7 do not apply to city courts, nor do they authorize a judge to draw his warrant to pay insolvent costs, costs where the defendant has been acquitted, or any other fund in the county treasury than the fund arising from fines and bond forfeitures, nor do they affect any local law. (Ga. L. 1876, p. 108, § 6; Code 1882, § 4655h; Penal Code 1895, § 1096; Penal Code 1910, § 1123; Code 1933, § 27-2909; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" near the end of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Cited in Upson v. Smith, 151 Ga. 213, 106 S.E. 175 (1921); Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Walden v. Bale, 78 Ga. App. 226, 50 S.E.2d 844 (1948); Payne v. State, 117 Ga. App. 92, 159 S.E.2d 459 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 457 et seq. 36 Am. Jur. 2d, Forfeitures and Penalties, § 17 et seq.

C.J.S. — 36A C.J.S., Fines, §§ 2, 19. 37 C.J.S., Forfeitures, §§ 1, 6, 7, 8, 10 et seq., 39, 41

15-21-9. Lien of officers for payment of insolvent costs.

The officers of court shall have a lien upon all funds arising from fines and bond forfeitures for the payment of their insolvent costs. (Ga. L. 1875, p. 88, § 1; Code 1882, § 4654; Penal Code 1895, § 1085; Penal Code 1910, § 1112; Code 1933, § 27-2910; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in the middle of this Code section. See editor's note for applicability.

Cross references. — Liens generally, § 44-14-320 et seq.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Payment of arresting fees from fines and forfeitures fund. — Under the general law of this state, arresting fees can be paid only from funds derived from fines and forfeitures, unless the fees are assessed against and paid by the defendants on conviction. Newport v. Longino, 178 Ga. 797, 174 S.E. 537 (1934).

No authorization for payment of fees if defendant able to pay. — Officers of the court are entitled to receive their fees from the fine and forfeiture fund in cases when the defendants have been acquitted, or when the persons liable by law for the payment of the costs are unable to pay the costs; but there is no provision of law authorizing the payment of these fees from this fund in cases when the convicted defendant is able to pay the costs. Pound v. Faulkner, 193 Ga. 413, 18 S.E.2d 749 (1942).

Interest of county in forfeitures. — County has no interest in the money collected from forfeited recognizances until after all the legal claims on such funds held and owned by officers bringing the

money into court shall have been allowed and paid. Randolph County v. Ellis, 130 Ga. 121, 60 S.E. 458 (1908).

Cited in Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947); Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Forfeitures and Penalties, § 15 et seq.

C.J.S. — 36A C.J.S., Fines, §§ 3, 6. 37 C.J.S., Forfeitures, §§ 30, 31, 33. 67 C.J.S., Officers and Public Employees, §§ 318, 322, 323.

15-21-10. Procedure for filing and payment of claims of officers of court when indictment found not true, defendant acquitted, or persons unable to pay.

In cases where a bill of indictment is preferred and not found true by the grand jury, where a defendant is acquitted by a jury, or where persons liable by law for the payment of costs are unable to pay the same, the officers severally entitled to such costs may present an account therefor to the judge of the court in which the prosecutions were pending, which, after being examined and allowed by him, he shall order to be paid in the manner prescribed by law. The account and order shall be entered on the minutes of the court. (Laws 1833, Cobb's 1851 Digest, p. 833; Code 1863, § 4519; Code 1868, § 4538; Code 1873, § 4631; Code 1882, § 4631; Penal Code 1895, § 1086; Penal Code 1910, § 1113; Code 1933, § 27-2911.)

JUDICIAL DECISIONS

Payment of arresting fees from fines and forfeitures fund. — Under the general law of this state, arresting fees can be paid only from funds derived from fines and forfeitures, unless the fees are assessed against and paid by the defendants on conviction. Newport v. Longino, 178 Ga. 797, 174 S.E. 537 (1934).

Cited in Wynne v. Smith, 23 Ga. App. 330, 98 S.E. 271 (1919); Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938); Walden v. Camp, 206 Ga. 593, 58 S.E.2d 175 (1950).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 99 et seq.

C.J.S. — 36A C.J.S., Fines, § 6. 37 C.J.S., Forfeitures, § 34. 67 C.J.S., Officers and Public Employees, § 337 et seq.

15-21-11. Priorities for distribution of fines and forfeitures generally.

Unless otherwise provided by law, money arising from fines for a violation of the penal laws or collected on forfeited recognizances in the superior courts shall be first applied to the extinguishment of the

insolvent lists of the officers bringing the funds into court and then to the orders of former officers in proportion to their claims. (Laws 1833, Cobb's 1851 Digest, p. 833; Laws 1850, Cobb's 1851 Digest, p. 863; Code 1863, § 4592; Ga. L. 1868, p. 25, § 1; Code 1868, § 4613; Code 1873, § 4709; Code 1882, § 4709; Penal Code 1895, § 1087; Penal Code 1910, § 1114; Code 1933, § 27-2912; Ga. L. 1983, p. 884, § 5-3.)

Cross references. — Priorities of distribution of fines, bond forfeitures, surcharges, additional fees, and costs in cases of partial payments into the court, O.C.G.A. § 15-6-95.

JUDICIAL DECISIONS

"The officers bringing it into court" construed. — "The officers bringing it into court" are those who are in office when the money is actually paid into court. Lane v. Duke, 37 Ga. App. 146, 139 S.E. 122 (1927).

Arresting fees paid from fines and forfeitures fund. — Under the general law of this state, arresting fees can be paid only from funds derived from fines and forfeitures, unless the fees are assessed against and paid by the defendants on conviction. Newport v. Longino, 178 Ga. 797, 174 S.E. 537 (1934).

Cited in Lumpkin County v. Davis, 185 Ga. 393, 195 S.E. 169 (1938).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 99 et seq. 36 Am. Jur. 2d, Forfeitures and Penalties, §§ 1, 15 et seq.

C.J.S. — 36A C.J.S., Fines, §§ 6, 19. 37 C.J.S., Forfeitures, §§ 1, 6, 7, 8, 10 et seq., 39, 41.

15-21-12. Contract for collection of moneys owed court.

For the purpose of collecting any moneys owed to a court pursuant to a judgment and with the recommendation of such court, a local governing authority may contract with any person doing business within or outside this state for the collection of moneys owed to such court; provided, however, that a local governing authority shall not enter into such contract for the collection of moneys owed as a result of a court order sentencing a defendant to a probationary sentence or placing a defendant under probationary supervision solely because such defendant is unable to pay the court imposed fines and statutory surcharges when such defendant's sentence is imposed. (Code 1981, § 15-21-12, enacted by Ga. L. 2015, p. 519, § 6-1/HB 328.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — This Code section formerly pertained to payment of costs due justices of the peace and constables in certain cases. The former Code section was based on Ga. L. 1874, p. 90, §§ 1, 3; Ga. L. 1882-83, p. 94, § 1; Ga. L. 1889, p. 101, § 1; Ga. L. 1981, Ex. Sess., p. 8; and was repealed by Ga. L. 1983, p. 884, § 5-4, effective July 1, 1983.

15-21-13. Priority of payment of claims for fees of solicitors of city courts, sheriffs, clerks, and district attorneys.

(a) All claims for fees of solicitors of city courts, sheriffs, clerks, and district attorneys shall be paid from the funds arising from fines imposed in criminal cases before any claim or order of any claimant or distributee shall be paid.

(b) Nothing contained in subsection (a) of this Code section shall in any way affect the fines and bond forfeitures of any court whose officers are on salaries and where the fines and bond forfeitures are remitted to the county treasury. (Ga. L. 1952, p. 246, §§ 1, 2; Ga. L. 1983, p. 884, § 5-5; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" twice in subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Sources of payment of claims for fees of justices of the peace. — In view of the provisions of this section that all claims for fees of justices of the peace shall be paid from the funds arising from fines imposed in criminal cases before any order of any claimant shall be paid, it appears that even in cases of conviction, costs should first be paid out of the fine and forfeiture fund, and, if such fund is insufficient in a given case, then out of the general county treasury. Gill v. Decatur County, 129 Ga. App. 697, 201 S.E.2d 21 (1973).

Cited in Gay v. Lewis, 101 Ga. App. 387, 114 S.E.2d 155 (1960).

RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Fines, §§ 2, 19. 37 C.J.S., Forfeitures, §§ 1, 6, 7, 8, 10 et seq, 39, 41.

ARTICLE 2

COMPENSATION OF JUSTICES OF THE PEACE AND CONSTABLES IN CERTAIN CASES

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-21-30 through 15-21-33.

Reserved. Repealed by Ga. L. 1983, p. 884, § 5-6, effective July 1, 1983.

Editor's notes. — This article was based on Ga. L. 1943, p. 539, §§ 1-5; Ga. L. 1977, p. 199, § 1; and Ga. L. 1981, Ex. Sess., p. 8.

ARTICLE 3

LIMITATION PERIOD AND RULES FOR CLAIMS AGAINST FINE AND BOND FORFEITURE FUND

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-21-50. Limitation period for claims against fine and bond forfeiture fund for payment of costs or fees; extension of limitation period.

Any costs or fees due any officer of court or to his heirs, administrators, executors, or assigns which are payable out of the fine and bond forfeiture fund shall be paid within seven years after the costs accrue or else the claim shall be barred by limitation and shall cease to be a valid claim against the fund or against any holder or custodian thereof under the law. The period of limitation may be extended as set out in Code Section 15-21-51. (Ga. L. 1949, p. 1168, § 2; Ga. L. 2015, p. 693, § 3-33/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeiture fund" for "fine and forfeiture fund" in the middle of the first sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Priority of claims to fund and interest of county in compliance with limitations provisions. — In no event would the county commissioners be entitled to use any of the money in the fine and forfeiture fund until all claimants have had an opportunity to file claims in accordance with the provisions of Ga. L. 1949, p. 1168, §§ 2 and 2A (see now O.C.G.A. §§ 15-21-50 and 15-21-51). The county is, however, entitled to have the provisions of the law complied with in order to protect any contingent interest the county may have in such fund under Ga. L. 1949, p. 1168, §§ 4-6 (see now O.C.G.A. § 15-21-56), and because, if the county did not bring such action within the period of limitations, the county's claims also would be barred. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

Cited in Busbee v. Gillis, 241 Ga. 353, 245 S.E.2d 304 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Ga. L. 1949, p. 1168, § 2A (see now O.C.G.A. § 15-21-51) provides the only method to extend the limitation set out in Ga. L. 1949, p. 1168, § 2 (see now O.C.G.A. § 15-21-50); this procedure applies only when a claim shall be made and recorded as ordered within the original or first seven-year period in order for the period of limitation to be extended. Any claim which was not extended under the provisions of Ga. L. 1949, p. 1168, § 2 is forever barred. 1958-59 Op. Att'y Gen. p. 47.

Joint construction of provisions warranted. — Ga. L. 1949, p. 1168, § 3 (see now O.C.G.A. § 15-21-55), which relates to disposition of surplus funds of a fine and forfeiture fund, should be construed in connection with Ga. L. 1949, p. 1168, §§ 2 and 2A (see now O.C.G.A. §§ 15-21-50 and 15-21-51) which are the statutes which relate to actions on claims against the funds. 1960-61 Op. Att'y Gen. p. 96.

Infancy at time action accrues postpones running of limitation period. — Existence of infancy at the time of the accrual of the cause of action will postpone the commencement of the running of the period of limitation until the person reached majority; the fact that the infant had a guardian who might have sued in the name of the ward, when the title and the right of action is in the infant, does not prevent such infant from enjoying the statutory benefit accorded to the infant by virtue of the infant's disability. 1958-59 Op. Att'y Gen. p. 403.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 99 et seq. 36 Am. Jur. 2d, Forfeitures and Penalties, § 28 et seq. 51 Am. Jur. 2d, Limitation of Actions, §§ 1, 27, 103.

C.J.S. — 36A C.J.S., Fines, §§ 2, 19. 37 C.J.S., Forfeitures, §§ 1, 6, 7, 8, 10 et seq., 39, 41. 54 C.J.S., Limitations of Actions, § 1 et seq.

ALR. — Settlement negotiations as estopping reliance on statute of limitations, 39 ALR3d 127.

15-21-51. Procedure for extension of limitation period.

Any claimant against the fine and bond forfeiture fund or the heirs, administrators, executors, personal representatives, or assigns of any officer holding any valid claim against the fund may extend the period of limitation for an additional seven years by filing with the clerk of the superior court of the county in which the claims arose another statement or claim setting forth the amount claimed and that the claimant has been unable to collect the claim or balance of the claim out of the fine and bond forfeiture fund. The statement shall be approved by the judge of the superior court of the county in which the claim arose and recorded on the minutes of the court by the clerk. The claim shall show on its face that it is made for the purpose of extending the period of limitation. The claim shall be made and recorded within the original seven-year period in order for the period of limitation to be extended. The extension of the period of limitation shall be for a period of seven years after the claim made for the purpose of extending the limitation period has been filed and recorded. The original period of limitation may be extended only once. (Ga. L. 1949, p. 1168, § 2A; Ga. L. 2015, p. 693, § 3-33/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeiture fund" for "fine and forfeiture fund" near the beginning and at the end of the first sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Priority of claims to fund and interest of county in compliance with limitations provisions. — In no event would the county commissioners be entitled to use any of the money in the fine and forfeiture fund until all claimants have had an opportunity to file claims in accordance with the provisions of Ga. L. 1949, p. 1168, §§ 2 and 2A (see now O.C.G.A. §§ 15-21-50 and 15-21-51). The county is, however, entitled to have the provisions of the law complied with in order to protect any contingent interest the county may have in such fund under Ga. L. 1949, p. 1168, §§ 4-6 (see now O.C.G.A. § 15-21-56), and because, if the county did not bring such action within the period of limitations, the county's claims also would be barred. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

OPINIONS OF THE ATTORNEY GENERAL

Ga. L. 1949, p. 1168, § 2A (see now O.C.G.A. § 15-21-51) provides the only method to extend the limitation set out in Ga. L. 1949, p. 1168, § 2 (see now O.C.G.A. § 15-21-50); this procedure applies only when a claim shall be made and recorded as ordered within the original or first seven-year period, in order for the period of limitation to be extended, and any claim which was not extended under the provisions of Ga. L. 1949, p. 1168, § 2 is forever barred. 1958-59 Op. Att'y Gen. p. 47.

Joint construction of provisions warranted. — Ga. L. 1949, p. 1168, § 3 (see now O.C.G.A. § 15-21-55), which relates to disposition of surplus funds of a fine and forfeiture fund, should be construed in connection with Ga. L. 1949, p. 1168, §§ 2 and 2A (see now O.C.G.A. §§ 15-21-50 and 15-21-51) which are the statutes which relate to actions on claims against the funds. 1960-61 Op. Att'y Gen. p. 96.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Limitation of Actions, § 148 et seq.

C.J.S. — 36A C.J.S., Fines, §§ 2, 19. 37 C.J.S., Forfeitures, §§ 6, 10. 54 C.J.S., Limitations of Actions, § 1 et seq.

ALR. — Settlement negotiations as estopping reliance on statute of limitations, 39 ALR3d 127.

15-21-52. Payment into county treasury of funds received as part of fine and bond forfeiture fund.

Any funds coming into the possession of the prosecuting attorney of any court, any officer of court, or any other person as a part of the fine and bond forfeiture fund shall be paid over by the prosecuting attorney

or other officer or person into the treasury of the county as provided by law. No payment to the county treasury of funds received by an officer shall be withheld past the end of the calendar year in which the funds were received. (Ga. L. 1949, p. 1168, § 2B; Ga. L. 2015, p. 693, § 3-33/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeiture fund" for "fine and forfeiture fund" in the middle of the first sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Action not barred if amount unascertainable because of failure of officer. — While it is the general rule that sums sued for in law must be set forth specifically, and if an indefinite amount is sought a recovery cannot be supported, such rule would not apply if the officers against whom the rule issued are under a duty to make up and keep the records from which such sums can be ascertained, to submit itemized bills of costs claimed out of such funds, and to pay over the surplus to the county treasurer not later than the end of the calendar year; and if, by reason of failure to perform this duty, the exact amount is unascertainable by parties who are interested in the fund. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

Cited in Ivestor v. Mozeley, 89 Ga. App. 578, 80 S.E.2d 197 (1954).

OPINIONS OF THE ATTORNEY GENERAL

Disposition of fines in transferred cases. — Since O.C.G.A. §§ 15-21-2 and 15-21-52 mandate that all fines collected by county courts be paid into the county treasury, a municipality and county cannot contract to provide for the division of moneys received as fines by the superior court from cases transferred under O.C.G.A. § 40-13-23. 1984 Op. Att'y Gen. No. U84-44.

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Forfeitures and Penalties, § 15 et seq.

C.J.S. — 36A C.J.S., Fines, § 19. 37 C.J.S., Forfeitures, §§ 39, 41.

15-21-53. Persons deemed county treasurers for purposes of article.

For purposes of this article, the person, firm, or corporation discharging the duties of county treasurer shall be deemed to be the county treasurer. All rights, powers, duties, responsibilities, and legal and equitable obligations and liabilities placed on county treasurers by this article shall apply with equal force and effect to those persons, firms, or corporations which perform or discharge the duties of county treasurers

under the law in the several counties of this state. (Ga. L. 1949, p. 1168, § 2C.)

15-21-54. Creation of claim for benefit of county against fine and bond forfeiture fund; priority of payment; rights of county to enforcement.

In all criminal cases in which a county pays costs or fees to any officer of any court, the amount of the costs and fees so paid shall thereupon become a claim against the fine and bond forfeiture fund for the benefit of the county. The claim for the benefit of the county shall at all times take the same priority of payment as against the fine and bond forfeiture fund as though the claim or the costs and fees were still held by the officer who received the payment. Upon payment of the costs or fees, the county shall become subrogated to the rights of the officer regarding payment out of the fine and bond forfeiture fund, with all rights enjoyed by the officer to enforce same at any time. (Ga. L. 1949, p. 1168, § 2D; Ga. L. 2015, p. 693, § 3-33/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeiture fund" for "fine and forfeiture fund" in three places in this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

OPINIONS OF THE ATTORNEY GENERAL

Court costs collectible from defendant include costs of meals. — Costs of feeding a prisoner while the prisoner is imprisoned awaiting trial are part of court costs collectible from the defendant. 1962 Op. Att'y Gen. p. 121.

Payment of fees from county fund rather than fines and forfeitures. — All fees accruing to the sheriff in felony cases should be paid from county funds rather than from the fines and forfeitures fund. 1952-53 Op. Att'y Gen. p. 321.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 95 et seq. 73 Am. Jur. 2d, Subrogation, § 1 et seq.

C.J.S. — 36A C.J.S., Fines, § 19. 37 C.J.S., Forfeitures, §§ 39, 41.

ALR. — Validity of obligation to pay or secure a fine or penalty, 29 ALR 7.

15-21-55. Disposition of funds remaining after claims against fine and bond forfeiture fund paid or barred by limitation.

Any surplus of funds which remain in the hands of the county treasurer or other custodian of the fine and bond forfeiture fund or in

the hands of any officer of court or other person as agent or representative of any officer of court after all legal claims against the fund have been paid or are barred by limitation shall be paid over into the general fund of the county treasury to be used by the county for the purpose of paying the expenses of courts, the maintenance and support of prisoners, paying sheriffs and coroners for litigation, and paying all legal demands of clerks of court, prosecuting officers, sheriffs, and other officers of court. (Ga. L. 1949, p. 1168, § 3; Ga. L. 1984, p. 22, § 15; Ga. L. 2015, p. 693, § 3-33/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeiture fund" for "fine and forfeiture fund" near the beginning of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Allegation of payment of claims allowed sufficient against motion to dismiss. — Allegation that "all legal claims on said funds that are due and that have been allowed have been paid in full for bringing the money into court, and there remains in the hands of the defendants" the sum sought by the county is sufficient as against general demurrer (now motion to dismiss) under the provisions of former Code 1933, § 27-2902 (see now O.C.G.A. § 15-21-2). Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

OPINIONS OF THE ATTORNEY GENERAL

Joint construction of statutes warranted. — Ga. L. 1949, p. 1168, § 3 (see now O.C.G.A. § 15-21-55), which relates to disposition of surplus funds of a fine and forfeiture fund, should be construed in connection with Ga. L. 1949, p. 1168, §§ 2 and 2A (see now O.C.G.A. §§ 15-21-50 and 15-21-51) which are the statutes which relate to actions on claims against the funds. 1960-61 Op. Att'y Gen. p. 96.

RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Fines, § 19. 37 C.J.S., Forfeitures, § 34.

ALR. — Validity of obligation to pay or secure a fine or penalty, 29 ALR 7.

15-21-56. Proceedings by persons claiming interest in fine and bond forfeiture fund.

(a) At any time, any claimant claiming any interest in the fine and bond forfeiture fund (including the officer or officers in charge of the roads and revenues of the county, on behalf of the county, and in the interest of the county in securing all moneys due hereunder to the general fund of the county for the purpose of paying expenses of the courts, the maintenance and support of prisoners, the payment to

sheriffs and coroners for litigation, and payment of all legal demands as aforesaid) may proceed as provided by law by rule and attachment against the county treasurer and the prosecuting officer.

(b) In the proceeding or rule the court may seize any such funds which are a part of the fine and bond forfeiture fund, by whomever held, under appropriate order and may order the funds paid into the registry of the court. To that end, for the purpose of carrying into effect this entire article, the court may join any necessary parties.

(c) The court, and the judge thereof, shall order such additional notice and service which to the court shall seem proper in order to protect the rights of all parties interested in the fund. The proceeding shall be in the nature of an equitable proceeding and shall be governed by all established rules and maxims of equity. The court may pass such orders and order such disposition of funds in the registry of the court, in the county treasury, or in the hands of any custodian of the fine and bond forfeiture fund as will ensure such payment to officers of court, to other legal claimants, or to the county, in lieu of the salary of officers of court, of the insolvent costs of such officers earned during their term of office, such payment to be out of fines and bond forfeitures collected during such terms as is provided by law. (Ga. L. 1949, p. 1168, §§ 4-6; Ga. L. 1982, p. 3, § 15; Ga. L. 2015, p. 693, §§ 3-32, 3-33/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeiture fund" for "fine and forfeiture fund" near the beginning of subsection (a), in the middle of subsection (b), and in the middle of the last sentence of subsection (c); and substituted "fines and bond forfeitures" for "fines and forfeitures" near the end of subsection (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Priority of claims to fund and interest of county in compliance with limitations provisions. — In no event would the county commissioners be entitled to use any of the money in the fine and forfeiture fund until all claimants have had an opportunity to file claims in accordance with the provisions of Ga. L. 1949, p. 1168, §§ 2 and 2A (see now O.C.G.A. §§ 15-21-50 and 15-21-51). The county is, however, entitled to have the provisions of the law complied with in order to protect any contingent interest the county may have in such fund under Ga. L. 1949, p. 1168, §§ 4-6 (see now O.C.G.A. § 15-21-56), and because, if the county did not bring such action within the period of limitations, the county's claims also would be barred. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

County commissioners act on behalf of county. — County commissioners are proper officers to proceed on behalf of the county. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

Venue in action with joint defendants. — Provisions of Ga. L. 1949, p. 1168, §§ 4-6 (see now O.C.G.A. § 15-21-56) are not sufficient to overrule

the provisions of Ga. Const. 1945, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI), providing that civil actions generally shall be brought in the county of the defendant's residence. However, if there are joint defendants, such an action may be brought in the county of residence of either. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, §§ 38 et seq., 61 et seq., 69, 226 et seq.

C.J.S. — 7 C.J.S., Attachment, §§ 5 et seq., 47, 62 et seq., 229, 287. 36A C.J.S., Fines, §§ 1, 2, 19, 20. 37 C.J.S., Forfeitures, §§ 2, 3, 4, 45 et seq.

15-21-57. Effect of article upon duty of prosecuting officers and county treasurers relating to accounting for fines and bond forfeitures.

Nothing in this article shall affect the duty of the prosecuting officer of any court or the treasurer of any county to account for fines and bond forfeitures to the parties legally entitled as provided by law (but subject to the limitations and alterations provided in this article), including paying to counties and their proper officers all parts of the fund to which the prosecuting officer, clerk of court, sheriff, or other officer would be entitled where, under the law, the funds are paid over to the county and its proper officer because the prosecuting officer, clerk of court, sheriff, or other officer is on a salary basis. (Ga. L. 1949, p. 1168, § 8; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" near the beginning of this Code section.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Duty of county treasurer to receive surplus of fund and hold surplus for distribution. — Bank acting as county depository becomes a quasi-public officer. It is therefore the duty of such bank, acting as county treasurer, to receive the surplus of the fine and forfeiture fund and hold the surplus for distribution as required by law. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Fines, § 6. 37 C.J.S., Forfeitures, §§ 39, 41. 67 C.J.S., Officers and Public Employees, §§ 281, 291, 309, 313, 314.

15-21-58. Effect of article upon Acts pertaining to courts in particular counties or cities.

Nothing in this article shall affect the validity of any special or local Act or Act affecting only a specific county dealing with the fines and bond forfeitures in any court or courts in any particular county or city in this state. (Ga. L. 1949, p. 1168, § 9; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in the middle of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

JUDICIAL DECISIONS

Cited in Ivestor v. Mozeley, 89 Ga. App. 578, 80 S.E.2d 197 (1954).

ARTICLE 4

PEACE OFFICER, PROSECUTOR, AND INDIGENT DEFENSE FUNDING

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Game and Fish Code prosecutions. — O.C.G.A. Art. 4, Ch. 21, T. 15 applies to cases prosecuted under the Georgia Game and Fish Code, O.C.G.A. T. 27. 1985 Op. Att'y Gen. No. U85-19.

Implementation of article. — O.C.G.A. § 48-2-12, which authorizes the commissioner of revenue to adopt rules and regulations for the enforcement of the revenue title and, with respect to other statutes outside of the revenue title, to prescribe forms which "he deems necessary for the administration and enforcement of ... any law which it is his duty to administer," would permit the commissioner to prescribe forms to be used to administer and enforce that part of O.C.G.A. Art. 4, Ch. 21, T. 15 which requires that moneys collected pursuant to that article be paid to the commissioner and that part which requires the department to pay those funds into the general treasury and make reports to the Office of Planning and Budget and the Legislative Budget Office. 1983 Op. Att'y Gen. No. 83-80.

Since the Supreme Court may through the court's rules regulate the practice of law and the court's own operations and procedures and is also required by Ga. Const. 1983, Art. VI, Sec. IX, Para. I to "adopt and publish uniform court rules and record-keeping rules which shall provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions," it is feasible that the Supreme

Court might under this authority adopt rules to implement O.C.G.A. Art. 4, Ch. 21, T. 15. 1983 Op. Att'y Gen. No. 83-80.

15-21-70. Short title.

This article shall be known as and may be cited as the "Peace Officer, Prosecutor, and Indigent Defense Funding Act." (Code 1981, § 15-21-70, enacted by Ga. L. 1983, p. 1094, § 1; Ga. L. 2005, p. ES3, § 5/HB 1EX.)

15-21-71. Implementation of constitutional provision.

This article is enacted in part pursuant to the authority of Article III, Section IX, Paragraph VI, subparagraph (d) of the Constitution of Georgia, which provision authorizes additional penalty assessments in criminal and traffic cases and provides that the proceeds derived therefrom may be used for the purpose of providing training to law enforcement officers and prosecuting officials. (Code 1981, § 15-21-71, enacted by Ga. L. 1983, p. 1094, § 1; Ga. L. 2005, p. ES3, § 5/HB 1EX.)

15-21-72. Legislative intent.

It is the intent of this article to provide funding for the training of law enforcement and prosecutorial officers and to make funds available for funding state indigent defense programs. (Code 1981, § 15-21-72, enacted by Ga. L. 1983, p. 1094, § 1; Ga. L. 2005, p. ES3, § 5/HB 1EX.)

OPINIONS OF THE ATTORNEY GENERAL

Municipal Court of Savannah is covered by the Peace Officer and Prosecutor Training Fund Act of 1983, O.C.G.A. § 15-21-70 et seq. 1983 Op. Att'y Gen. No. U83-57.

15-21-73. Penalty to be imposed in certain criminal and quasi-criminal and traffic cases and upon violation of bond.

(a)(1) In every case in which any state court, probate court, juvenile court, police, recorder's, or mayor's court, municipal court, magistrate court, or superior court in this state shall impose a fine, which shall be construed to include costs, for any criminal or quasi-criminal offense against a criminal or traffic law, including civil traffic violations and violations of local criminal ordinances, of this state or political subdivision thereof, there shall be imposed as an additional penalty a sum equal to:

(A) The lesser of $50.00 or 10 percent of the original fine; plus

(B) An additional 10 percent of the original fine.

(2) At the time of posting bail or bond in any case involving a violation of a criminal or traffic law of this state or political subdivision thereof, an additional sum equal to:

(A) The lesser of $100.00 or 10 percent of the original amount of bail or bond; plus

(B) The lesser of an additional $100.00 or 10 percent of the original amount of bail or bond

shall be posted. In every case in which any state court, probate court, municipal court, magistrate court, recorder's court, mayor's court, or superior court shall order the forfeiture of bail or bond, the additional amounts provided for in this paragraph shall be paid over as provided in Code Section 15-21-74.

(b) Such sums shall be in addition to that amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts Retirement Fund of Georgia and any other amounts provided for by law. (Code 1981, § 15-21-73, enacted by Ga. L. 1983, p. 1094, § 1; Ga. L. 1984, p. 22, § 15; Ga. L. 1987, p. 3, § 15; Ga. L. 1988, p. 286, § 1; Ga. L. 2005, p. ES3, § 5/HB 1EX; Ga. L. 2008, p. 846, § 10/HB 1245.)

Cross references. — Assessment of costs in criminal cases, Uniform Superior Court Rules, Rule 36.15.

JUDICIAL DECISIONS

Penalty fee not authorized on drug conviction. — Upon conviction of a defendant of possession of cocaine with intent to distribute, the trial court was without authority to impose a fine, penalty fee, and D.A.T.E. fee; the penalty for the offense does not include monetary fines. Rawls v. State, 210 Ga. App. 408, 436 S.E.2d 527 (1993).

Fines may be imposed in addition to maximum fine. — Fines under O.C.G.A. § 15-21-73 may be added to the maximum allowable fine under O.C.G.A. § 17-10-3 and no offer of proof is necessary. Williams v. State, 221 Ga. App. 291, 470 S.E.2d 922 (1996).

No substantive due process violation. — City did not violate a driver's substantive due process rights by adding court surcharges under O.C.G.A. § 15-21-73 to a penalty for running a red light under O.C.G.A. § 40-6-20 before stopping the practice pursuant to an opinion by the state Attorney General; the city's actions of collecting surcharges that the city thought were permissible under state law and remitting the moneys to other governmental authorities appeared to have been taken in good faith and did not shock the conscience. City of Duluth v. Morgan, 287 Ga. App. 322, 651 S.E.2d 475 (2007).

Cited in Barraco v. State, 252 Ga. App. 25, 555 S.E.2d 244 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Application of surcharge. — Surcharge authorized by the Peace Officer and Prosecutor Training Fund Act of 1983, O.C.G.A. § 15-21-70 et seq., should not be collected in cases in which the offense occurred prior to July 1, 1983, even though trial and/or conviction is after that date. 1983 Op. Att'y Gen. No. U83-51.

Applicability of section. — O.C.G.A. § 15-21-73 does not apply to a criminal case until there is a conviction; therefore, a criminal case which is dismissed or disposed of by nolle prosequi is not covered. 1983 Op. Att'y Gen. No. 83-80.

Construction with other law. — Additional monetary penalties provided in O.C.G.A. § 15-21-73 may not be added to the civil monetary penalties imposed pursuant to O.C.G.A. § 40-6-20. 2005 Op. Att'y Gen. No. U2005-4.

When penalty imposed. — If a sentence imposes neither costs nor a traditional fine, no penalty could be imposed under O.C.G.A. § 15-21-73. 1983 Op. Att'y Gen. No. 83-80.

Surcharge applicable to costs if fine less than $500. — Ten percent surcharge imposed by subsection (a) of O.C.G.A. § 15-21-73 is to be collected on court costs imposed in addition to a fine in a criminal case whenever the amount of the fine is less than $500. 1984 Op. Att'y Gen. No. U84-18.

Surcharge is an additional penalty to be added to the fine and to the amount of any bail or bond established by the court. 1996 Op. Att'y Gen. No. U96-8.

Penalties and fine exceeding maximum fine. — Penalties may be added which, together with the fine, would exceed the maximum fine permitted by law since, according to the clear terms of O.C.G.A. § 15-21-73, the penalty in question is in addition to the fine. 1983 Op. Att'y Gen. No. 83-80.

Necessity for court ordering payment of penalty. — Sentencing judge is not required to make the additional penalty part of the sentence; both the additional penalty and the additional sum in the case of bonds may be added on by the respective court officer whose duty it is to collect the moneys in each particular case. 1983 Op. Att'y Gen. No. 83-80.

Revocation of probation on failure to pay additional penalty. — With respect to the revocation of probation on account of a failure to pay the additional penalty, as long as it is a condition of probation that the probationer not violate the laws of the state, it would appear that revocation could be accomplished even though the additional penalty was not specifically prescribed by the sentencing judge, but as a matter of practice the penalty should certainly be included as a condition in the order of probation. 1983 Op. Att'y Gen. No. 83-80.

15-21-74. Assessment and collection of penalties; transfer of payments to Georgia Superior Court Clerks' Cooperative Authority; quarterly accounting.

The sums provided for under paragraph (1) of subsection (a) of Code Section 15-21-73 shall be assessed and collected by the court officer charged with the duty of collecting moneys arising from fines and shall be paid over to the Georgia Superior Court Clerks' Cooperative Authority by the last day of the month there following, to be deposited by the authority into the general treasury. The sums provided for under paragraph (2) of subsection (a) of Code Section 15-21-73 shall be assessed and collected by the court officer charged with the duty of collecting moneys arising from forfeited bonds and shall be paid over to the Georgia Superior Court Clerks' Cooperative Authority by the last day of the month there following for remittance to the Office of the State

Treasurer; provided, however, that if the local governing authority has an approved procedure to verify the applicant's income as set forth in Code Section 17-12-80, the court officer shall remit 50 percent of such funds to the Georgia Superior Court Clerks' Cooperative Authority, and the remaining 50 percent shall be remitted to the local governing authority and reported to the Georgia Superior Court Clerks' Cooperative Authority. The authority shall, on a quarterly basis, make a report and accounting of all funds collected and disbursed pursuant to this article and shall submit such report and accounting to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office no later than 60 days after the last day of the preceding quarter. (Code 1981, § 15-21-74, enacted by Ga. L. 1983, p. 1094, § 1; Ga. L. 1984, p. 22, § 15; Ga. L. 2005, p. ES3, § 5/HB 1EX; Ga. L. 2008, p. VO1, § 1-6/HB 529; Ga. L. 2008, p. 846, § 11/HB 1245; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2014, p. 866, § 15/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "House Budget and Research Office" for "House Budget Office" and substituted "Senate Budget and Evaluation Office" for "Senate Budget Office" in the last sentence of this Code section.

Editor's notes. — Ga. L. 2008, p. VO1, § 1-6/HB 529, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

OPINIONS OF THE ATTORNEY GENERAL

Application of surcharge. — Surcharge authorized by the Peace Officer and Prosecutor Training Fund Act of 1983, O.C.G.A. § 15-21-70 et seq., should not be collected in cases in which the offense occurred prior to July 1, 1983, even though trial and/or conviction is after that date. 1983 Op. Att'y Gen. No. U83-51.

Priority of disbursement. — In the event of partial or installment payments of funds, the payments must be allocated proportionally between money attributable to the fine and to the surcharges, and the amount applicable to the surcharges allocated proportionally to the fund. 1996 Op. Att'y Gen. No. U96-8.

Necessity for court ordering payment of penalty. — Sentencing judge is not required to make the additional penalty part of the sentence; both the additional penalty and the additional sum in the case of bonds may be added on by the respective court officer whose duty it is to collect the moneys in each particular case. 1983 Op. Att'y Gen. No. 83-80.

Responsibility for assessing and collecting moneys. — There is no single "court officer" who is responsible for assessing, collecting, and remitting to the Department of Revenue the sums described in O.C.G.A. Art. 2, Ch. 21, T. 15. Prosecuting attorneys, sheriffs, clerks of courts, and probation officers each are responsible for assessing and collecting the described penalty in any case in which they are "charged with the duty of collecting moneys arising from fines and forfeited bonds." 1983 Op. Att'y Gen. No. 83-80.

15-21-75. Penalty for delinquent remission of moneys.

Reserved. Repealed by Ga. L. 2005, p. ES3, § 5/HB 1EX, effective June 15, 2004.

Editor's notes. — This Code section was based on Ga. L. 1983, p. 1094, § 1; Ga. L. 1984, p. 22, § 15.

15-21-76. Failure or refusal to remit moneys.

Reserved. Repealed by Ga. L. 2005, p. ES3, § 5/HB 1EX, effective June 15, 2004.

Editor's notes. — This Code section was based on Ga. L. 1983, p. 1094, § 1.

15-21-77. Appropriations for law enforcement or prosecutorial officers' training.

An amount equal to the net proceeds derived under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73 in the immediately preceding year shall be appropriated to fund law enforcement or prosecutorial officers' training, or both, and activities incident thereto, including, but not limited to, payment or repayment to the state treasury for capital outlay, general obligation bond debt service, administrative expenses, and any other expense or fund application which the General Assembly may deem appropriate. This Code section shall not preclude the appropriation of a greater amount for this purpose. (Code 1981, § 15-21-77, enacted by Ga. L. 1983, p. 1094, § 1; Ga. L. 1984, p. 22, § 15; Ga. L. 2005, p. ES3, § 5/HB 1EX; Ga. L. 2008, p. 846, § 12/HB 1245.)

ARTICLE 5

JAIL CONSTRUCTION AND STAFFING

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-21-90. Short title.

This article shall be known and may be cited as the "Jail Construction and Staffing Act." (Code 1981, § 15-21-90, enacted by Ga. L. 1989, p. 1753, § 1.)

Law reviews. — For note on 1989 enactment of this article, see 6 Ga. St. U.L. Rev. 287 (1989).

15-21-91. Implementation of constitutional provision.

This article is enacted pursuant to Article III, Section IX, Paragraph VI of the Constitution of Georgia, which provision authorizes additional penalty assessments in criminal and traffic cases and cases involving violations of ordinances of political subdivisions and provides that the proceeds derived therefrom may be used for constructing, operating, and staffing of jails, correctional institutions, and detention facilities by counties. (Code 1981, § 15-21-91, enacted by Ga. L. 1989, p. 1753, § 1.)

15-21-92. Adoption of county resolution required; contracts between county and municipality after January 1, 1990.

The additional penalties provided for in Code Section 15-21-93 shall not be imposed or collected in any court in any county until the governing authority of the county or counties adopts a resolution placing this article in effect, requiring the imposition and collection of such additional penalties, and agreeing to expend the funds collected for the purposes provided for in this article. The additional penalties provided for in Code Section 15-21-93 shall not be imposed or collected in any municipal court or other court operated by a municipality unless the municipality and county enter into an intergovernmental contract after January 1, 1990, providing for use of the county jail, correctional institution, or detention facility by municipal prisoners. (Code 1981, § 15-21-92, enacted by Ga. L. 1989, p. 1753, § 1; Ga. L. 1990, p. 8, § 15.)

15-21-93. Imposition of additional penalty in fine cases; additional sum required when posting bail or bond.

(a)(1) In every case in which any superior court, state court, probate court, magistrate court, municipal court, or other court in any county or municipality in which this article has been placed in effect as provided in Code Section 15-21-92 shall impose a fine, which shall be construed to include costs, for any offense against a criminal or traffic law of this state or any ordinance of a political subdivision thereof, there shall be imposed as an additional penalty a sum equal to 10 percent of the original fine.

(2) At the time of posting bail or bond in any case involving a violation of a criminal or traffic law of this state or ordinance of a political subdivision thereof, an additional sum equal to 10 percent of the original amount of bail or bond shall be posted. In every case in which any superior court, state court, probate court, magistrate court, municipal court, or other court shall order the forfeiture of bail or bond, the additional sum equal to 10 percent of the original bail or bond shall be paid over as provided in Code Section 15-21-94.

(b) Such sums required by subsection (a) of this Code section shall be in addition to that amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts Retirement Fund of Georgia. (Code 1981, § 15-21-93, enacted by Ga. L. 1989, p. 1753, § 1.)

Cross references. — Assessment of costs in criminal cases, Uniform Superior Court Rules, Rule 36.15.

JUDICIAL DECISIONS

Surcharges. — Surcharges of $1,000 on a $10,000 fine, applied for jail construction and maintenance, did not exceed the statutory maximum of the total fine and were not illegal. Phillips v. State, 236 Ga. App. 744, 512 S.E.2d 32 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Additional fee under paragraph (a)(2). — Additional 10 percent sum authorized by O.C.G.A. § 15-21-93(a)(2) is mandatory. The provisions of this statute should not be applied, however, except to bail or bond posted by an individual who has been adjudged guilty. The fee on bail or bond should be applied in all applications for bail or bond made after January 1, 1990, regardless of the date upon which the offense was committed. 1990 Op. Att'y Gen. No. U90-4.

Surcharge is an additional penalty to be added to the fine and to the amount of any bail or bond established by the court. 1996 Op. Att'y Gen. No. U96-8.

Reduction on city's inmate housing bill. — Jail Construction and Staffing Act, O.C.G.A. § 15-21-90 et seq., does not prohibit a county from considering a reduction on a city's inmate housing bill in the amount equivalent to the required 10 percent add on moneys paid to the county. 1998 Op. Att'y Gen. No. U98-7.

15-21-94. Assessment and collection of sums; deposit into county jail fund; failure to remit sums.

(a) The sums provided for in Code Section 15-21-93 shall be assessed and collected by the clerk or court officer charged with the duty of collecting moneys arising from fines and forfeited bonds and shall be paid over to the governing authority of the county in which the court is located or, in the case of a municipality which has contracted for jail services, to the governing authority of the county with which the municipality has contracted by the tenth day of the month following the month in which such sums are collected. Such sums paid over to the governing authority shall be deposited by the governing authority into a special account to be known as the "county jail fund."

(b) Any person whose duty it is to collect and remit the sums provided for in this article who fails or refuses to remit such sums by the date required by this article shall be guilty of a misdemeanor. (Code 1981, § 15-21-94, enacted by Ga. L. 1989, p. 1753, § 1; Ga. L. 1992, p. 994, § 1; Ga. L. 1992, p. 2065, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Priority of disbursement. — In the event of partial or installment payments of funds, the payments must be allocated proportionally between money attributable to the fine and to the surcharges, and the amount applicable to the surcharges allocated proportionally to the fund. 1996 Op. Att'y Gen. No. U96-8.

15-21-95. Expenditure of moneys.

Moneys collected pursuant to this article and placed in the county jail fund shall be expended by the governing authority of the county or counties solely and exclusively for constructing, operating, and staffing county jails, county correctional institutions, and detention facilities of the county or for the purpose of contracting for such facilities with other counties, the state, municipalities, regional jail authorities, or other political subdivisions as authorized by Article IX, Section III, Paragraph I of the Constitution. The county jail fund and moneys collected pursuant to this article to be placed in the county jail fund may be pledged as security for the payment of bonds issued for the construction of county jails, county correctional institutions, detention facilities of the county or counties, and jails constructed and operated by regional jail authorities. This article shall not preclude the appropriation or expenditure of other funds by the governing authority of any county or by the General Assembly for the purpose of constructing, operating, or staffing jails, correctional institutions, and detention facilities. (Code 1981, § 15-21-95, enacted by Ga. L. 1989, p. 1753, § 1; Ga. L. 1995, p. 285, § 1.)

ARTICLE 6

COUNTY DRUG ABUSE TREATMENT AND EDUCATION FUND

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U.L. Rev. 63 (2013).

15-21-100. Imposition of additional penalty for certain offenses.

(a) In every case in which any court shall impose a fine, which shall be construed to include costs, for any offense prohibited by Code Section 16-13-30, 16-13-30.1, 16-13-30.2, 16-13-30.3, 16-13-30.5, 16-13-31, 16-13-31.1, 16-13-32, 16-13-32.1, 16-13-32.2, 16-13-32.3, 16-13-32.4, 16-13-32.5, or 16-13-32.6, there shall be imposed as an additional penalty a sum equal to 50 percent of the original fine. The additional 50 percent penalty shall also be imposed in every case in which a fine is imposed for violation of:

(1) Code Section 3-3-23.1;

(2) Code Section 40-6-391; or

(3) Code Section 40-6-393 or 40-6-394 if the offender was also charged with a violation of Code Section 40-6-391.

If no fine is provided for in the applicable Code section, and the judge places the defendant on probation, the fine authorized by Code Section 17-10-8 shall be applicable.

(b) The sums required by subsection (a) of this Code section shall be in addition to the amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts Retirement Fund of Georgia. (Code 1981, § 15-21-100, enacted by Ga. L. 1990, p. 2018, § 1; Ga. L. 1994, p. 97, § 15; Ga. L. 2012, p. 899, § 2-4/HB 1176.)

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

JUDICIAL DECISIONS

Fee not authorized on drug conviction. — Upon conviction of a defendant of possession of cocaine with intent to distribute, the trial court was without authority to impose a fine, penalty fee, and D.A.T.E. fee; the penalty for the offense does not include monetary fines. Rawls v. State, 210 Ga. App. 408, 436 S.E.2d 527 (1993).

Cited in Hermann v. State, 249 Ga. App. 535, 548 S.E.2d 666 (2001).

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Applicable to drug-related felonies and convictions. — Additional penalties called for in O.C.G.A. §§ 15-12-100 and 40-5-75 are to be imposed upon convictions for drug-related felonies and misdemeanors. 1990 Op. Att'y Gen. No. U90-21.

Applicable to criminal conduct occurring on or after July 1, 1990. — O.C.G.A. § 15-12-100 can only be applied to criminal conduct which occurred on or after July 1, 1990. 1990 Op. Att'y Gen. No. U90-23.

Court costs included in original fine. — In imposing the additional penalty pursuant to subsection (a) of O.C.G.A. § 15-12-100, court costs should be included in determining the amount of the original fine. 1996 Op. Att'y Gen. No. U96-14.

15-21-101. Collection of fines and authorized expenditures of funds from County Drug Abuse Treatment and Education Fund.

(a) The sums provided for in Code Section 15-21-100 shall be collected by the clerk or court officer charged with the duty of collecting

moneys arising from fines and forfeited bonds and shall be paid over to the governing authority of the county in which the court is located upon receipt of the fine and assessment if paid in full at the time of sentencing or upon receipt of the final payment if the fine is paid in installments. Those sums paid over to the governing authority shall be deposited thereby into a special account to be known as the "County Drug Abuse Treatment and Education Fund."

(b) Moneys collected pursuant to this article and placed in the "County Drug Abuse Treatment and Education Fund" shall be expended by the governing authority of the county for which the fund is established solely and exclusively:

(1) For drug abuse treatment and education programs relating to controlled substances, alcohol, and marijuana; and

(2) If a drug court division has been established in the county under Code Section 15-1-15, for purposes of the drug court division.

This article shall not preclude the appropriation or expenditure of other funds by the governing authority of any county or by the General Assembly for the purpose of drug abuse treatment or education programs or drug court divisions. (Code 1981, § 15-21-101, enacted by Ga. L. 1990, p. 2018, § 1; Ga. L. 2012, p. 899, § 2-4/HB 1176.)

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

ARTICLE 7

COMPENSATION TO VICTIMS OF VIOLATORS OF DRIVING UNDER THE INFLUENCE STATUTE

Cross references. — Driving under the influence of alcohol, drugs, or other intoxicating substances, § 40-6-391.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-21-110. Constitutional authority for enactment of article.

This article is enacted pursuant to Article III, Section VI, Paragraph VI, subparagraph (f) of the Constitution of Georgia, which provision authorizes the allocation of funds and a continuing fund for the purpose of compensating innocent victims of crime and for the administration of

any law enacted for such purpose. (Code 1981, § 15-21-110, enacted by Ga. L. 1992, p. 1836, § 1.)

Law reviews. — For note on 1992 enactment of this article, see 9 Ga. St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

Fine improperly imposed. — Since no fine was imposed on the driving under the influence offense that violated O.C.G.A. § 40-6-391, the $100 brain/spinal cord fee imposed under O.C.G.A. §§ 15-21-149 and 15-21-150 and the $25 driving under the influence victim surcharge imposed under O.C.G.A. §§ 15-21-110 and 15-21-112(a) should not have been imposed under O.C.G.A. §§ 15-21-112 and 15-21-149(a) because those fees were contingent upon the imposition of a fine. Johnson v. State, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Cited in Hannah v. State, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

15-21-111. Legislative intent.

It is the intent of this article to provide funding for compensating innocent victims of crime and for the implementation and administration of Chapter 15 of Title 17. (Code 1981, § 15-21-111, enacted by Ga. L. 1992, p. 1836, § 1.)

15-21-112. Additional penalty for violation of Code Section 40-6-391.

(a) In every case in which any state court; probate court; juvenile court; municipal court, whether known as mayor's, recorder's, or police court; or superior court in this state shall impose a fine, which shall be construed to include costs, for a violation of Code Section 40-6-391, relating to driving under the influence of alcohol or drugs, or a violation of an ordinance of a political subdivision of this state which has adopted by reference Code Section 40-6-391 pursuant to Article 14 of Chapter 6 of Title 40, there shall be imposed as an additional penalty a sum equal to the lesser of $26.00 or 11 percent of the original fine.

(b) Such sums shall be in addition to that amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts Retirement Fund of Georgia. (Code 1981, § 15-21-112, enacted by Ga. L. 1992, p. 1836, § 1; Ga. L. 1994, p. 1800, § 8; Ga. L. 2004, p. 709, § 2.)

Editor's notes. — Ga. L. 2004, p. 709, § 1, not codified by the General Assembly, provides that: "The General Assembly declares that this Act is enacted pursuant to the provisions of Article III, Section VI, Paragraph VI(f) of the Constitution."

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 166 (1994).

JUDICIAL DECISIONS

Fine improperly imposed. — Since no fine was imposed on the driving under the influence offense that violated O.C.G.A. § 40-6-391, the $100 brain/spinal cord fee imposed under O.C.G.A. §§ 15-21-149 and 15-21-150 and the $25 driving under the influence victim surcharge imposed under O.C.G.A. §§ 15-21-110 and 15-21-112(a) should not have been imposed under O.C.G.A. §§ 15-21-112 and 15-21-149(a) because those fees were contingent upon the imposition of a fine. Johnson v. State, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Cited in Hannah v. State, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

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Surcharge is an additional penalty to be added to the fine; no provision is made for assessment when bail or bond is posted. 1996 Op. Att'y Gen. No. U96-8.

15-21-113. Assessment and collection of penalty; payment to Georgia Superior Court Clerks' Cooperative Authority; quarterly reports and accounting.

The sums provided for in Code Section 15-21-112 shall be assessed and collected by the court officer charged with the duty of collecting moneys arising from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Georgia Crime Victims Compensation Board, to be deposited into the Georgia Crime Victims Emergency Fund. The authority shall, on a quarterly basis, make a report and accounting of all funds collected pursuant to this article and shall submit such report and accounting to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office no later than 60 days after the last day of the preceding quarter. (Code 1981, § 15-21-113, enacted by Ga. L. 1992, p. 1836, § 1; Ga. L. 2005, p. ES3, § 6/HB 1EX; Ga. L. 2008, p. VO1, § 1-7/HB 529; Ga. L. 2014, p. 866, § 15/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "House Budget and Research Office" for "House Budget Office" and substituted "Senate Budget and Evaluation Office" for "Senate Budget Office" in the last sentence of this Code section.

Editor's notes. — Ga. L. 2008, p. VO1, § 1-7/HB 529, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

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Priority of disbursement. — In the event of partial or installment payments of funds, the payments must be allocated proportionally between money attributable to the fine and to the surcharges, and the amount applicable to the surcharges allocated proportionally to the fund. 1996 Op. Att'y Gen. No. U96-8.

15-21-114. Failure to remit moneys in timely manner.

Reserved. Repealed by Ga. L. 2005, p. ES3, § 6/HB 1EX, effective June 15, 2004.

Editor's notes. — This Code section was based on Ga. L. 1992, p. 1836, § 1.

15-21-115. Failure or refusal to remit sums due.

Any person whose duty it is to collect and remit the sum provided for in this article who fails or refuses to so remit shall be guilty of a misdemeanor. (Code 1981, § 15-21-115, enacted by Ga. L. 1992, p. 1836, § 1.)

ARTICLE 8

FUNDING FOR LOCAL VICTIM ASSISTANCE PROGRAMS

Cross references. — State Victim Services Commission, T. 35, C. 6.

Administrative rules and regulations. — Certification of Crime Victim Assistance Programs, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Criminal Justice Coordinating Council, Adoption of Rules, Rule 144-4-.05.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U.L. Rev. 63 (2013).

For note on the 1995 enactment of this article, see 12 Ga. St. U.L. Rev. 89 (1995).

15-21-130. Legislative intent.

It is the intent of this article to provide funding for local victim assistance programs. (Code 1981, § 15-21-130, enacted by Ga. L. 1995, p. 260, § 3.)

15-21-131. Imposition of additional fines.

(a) In every case in which any court of this state or any municipality or political subdivision of this state shall impose a fine, which shall be construed to include costs, for any criminal offense or any criminal ordinance violation, there shall be imposed as an additional penalty a sum equal to 5 percent of the original fine.

(b) Such sums shall be in addition to any amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund and in addition to any other amounts provided for in this chapter.

(Code 1981, § 15-21-131, enacted by Ga. L. 1995, p. 260, § 3; Ga. L. 1997, p. 551, § 1.)

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Traffic offenses. — Imposition of the five percent additional penalty includes chargeable traffic offenses. 1997 Op. Att'y Gen. No. U97-28.

Additional penalty. — Additional penalty imposed under O.C.G.A. § 15-21-131 should be collected in traffic cases, unless there is a specific exception in which the accused posts a cash bond that is subsequently forfeited and applied as a fine in lieu of the accused appearing in court. 2006 Op. Att'y Gen. No. 2006-1.

15-21-132. Assessment and collection of additional sums; reporting; certification of victim assistance programs.

(a) The sums provided for in Code Section 15-21-131 shall be assessed and collected by the court officer charged with the duty of collecting moneys arising from fines and shall be paid monthly:

(1) If the county where the fine was imposed operates or participates in any victim assistance program certified by the Criminal Justice Coordinating Council, to the governing authority of the county for disbursement to those victim assistance programs; or

(2) If the county where the fine was imposed does not operate or participate in any victim assistance program certified by the Criminal Justice Coordinating Council, to the district attorney of the judicial circuit in which the county is located for the purpose of defraying the costs of victim assistance activities carried out by the district attorney's office. Such funds shall be paid over in the same manner as other county funds paid for operations of the district attorney's office and shall be in addition to rather than in lieu of any other such funds.

All such funds shall be paid to the recipients by the last day of the month in which the funds are received; provided, however, that the governing authority of the county shall be authorized to hold as reserve funds an amount not to exceed 5 percent of the funds received by the governing authority in the preceding calendar year.

(b) The court officer charged with the duty of collecting moneys arising from fines as provided for in Code Section 15-21-131 shall receive and distribute the funds collected to the county governing authority or district attorney, as appropriate, and shall submit a monthly report of the collection and distribution of such funds to the Georgia Superior Court Clerks' Cooperative Authority, and the Georgia Superior Court Clerks' Cooperative Authority shall submit a financial report to the Criminal Justice Coordinating Council each month stating the amount collected and the amount disbursed no later than the last day of the month following the month in which the funds were collected.

(c) The county governing authority receiving funds shall submit a financial report to the Criminal Justice Coordinating Council semiannually stating the recipients that directly received funds during such reporting period no later than the last day of the month following the reporting period in which the funds were collected in order to allow coordination of local, state, and federal funding sources for similar services. The Criminal Justice Coordinating Council shall report annually to the General Assembly the county governing authorities that failed to submit semiannual reports during the previous calendar year.

(d) All recipients of funds pursuant to this Code section, except county governing authorities, shall submit an annual report to the Criminal Justice Coordinating Council. Such report shall include, but not be limited to, the total amount of funds received pursuant to this Code section, the purposes for which the funds were expended, and the total number of victims served in each county for which the funds were received. A copy of each recipient's annual report shall also be submitted to each county governing authority from which funds were received pursuant to this Code section.

(e) The Criminal Justice Coordinating Council shall promulgate rules governing the certification of victim assistance programs. The rules shall provide for the certification of programs which are designed to provide substantial assistance to victims of crime in understanding and dealing with the criminal justice system as it relates to the crimes committed against them. It is the intention of the General Assembly that certification shall be liberally granted so as to encourage local innovations in the development of victim assistance programs.

(f) The Criminal Justice Coordinating Council shall promulgate rules governing the revocation of certification of victim assistance programs. Such rules shall provide for the decertification of programs previously certified by the Criminal Justice Coordinating Council that are no longer in compliance with the rules promulgated by the Criminal Justice Coordinating Council pursuant to this Code section.

(g) Moneys arising from fines imposed pursuant to Code Section 15-21-131 shall not be paid to any victim assistance program that has not been certified by the Criminal Justice Coordinating Council or to any program that has been decertified by such council.

(h) Each calendar quarter, the Criminal Justice Coordinating Council shall prepare and publish, by document and posting on its website, a report that shall list each court which has not filed the reports required by subsection (b) of this Code section. (Code 1981, § 15-21-132, enacted by Ga. L. 1995, p. 260, § 3; Ga. L. 2000, p. 1359, § 1; Ga. L. 2005, p. ES3, § 7/HB 1EX; Ga. L. 2006, p. 710, § 1/SB 203.)

Cross references. — Criminal Justice Coordinating Council, § 35-6A-1 et seq.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 61 (2006).

For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 68 (2000).

15-21-133. Payment of additional sums.

Reserved. Repealed by Ga. L. 2005, p. ES3, § 8/HB 1EX, effective June 15, 2004.

Editor's notes. — This Code section was based on Ga. L. 1995, p. 260, § 3.

15-21-134. Refusal to pay sums as provided in this article.

Any person whose duty it is to collect and remit the sums provided for in this article who refuses to so remit shall be guilty of a misdemeanor. (Code 1981, § 15-21-134, enacted by Ga. L. 1995, p. 260, § 3.)

ARTICLE 9

BRAIN AND SPINAL INJURY TRUST FUND

Editor's notes. — The constitutional amendment (Ga. L. 1998, p. 1683) which was necessary for the effectiveness of this article was approved by a majority of the qualified voters voting at the general election in November, 1998.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-21-140. Authorization of additional penalty assessments for violations involving driving under the influence.

This article is enacted pursuant to Article III, Section IX, Paragraph VI(k) of the Constitution, which provision authorizes additional penalty assessments for violations relating to driving under the influence of alcohol or drugs and provides that the proceeds derived therefrom may be used for the purpose of meeting the costs of care and rehabilitative services for certain citizens of this state with brain or spinal cord injuries. (Code 1981, § 15-21-140, enacted by Ga. L. 1998, p. 667, § 1.)

15-21-141. Definitions.

As used in this article, the term:

(1) "Commission" means the Brain and Spinal Injury Trust Fund Commission created in Code Section 15-21-142.

(2) "Trust fund" means the Brain and Spinal Injury Trust Fund created by Code Section 15-21-148. (Code 1981, § 15-21-141, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2002, p. 528, § 1.)

15-21-142. Fund established.

There is established the Brain and Spinal Injury Trust Fund Commission which is assigned to the Department of Public Health for administrative purposes only, as prescribed in Code Section 50-4-3. (Code 1981, § 15-21-142, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2002, p. 528, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

15-21-143. Appointment of members and personnel; agencies.

(a) The Brain and Spinal Injury Trust Fund Commission shall consist of 16 members who shall serve for terms of two years, except that with respect to the first members appointed, five members shall be appointed for a term of three years, five for a term of two years, and five for a term of one year. The following agencies may each appoint one member of the commission:

(1) The Georgia Vocational Rehabilitation Agency;

(2) The State Board of Education;

(3) The Department of Public Safety;

(4) The Department of Community Health;

(5) The Department of Public Health; and

(6) The Department of Human Services.

The remaining ten members of the commission shall be appointed by the Governor, seven of whom shall be citizens who have sustained brain or spinal cord injury or members of such persons' immediate families, no more than one of whom shall reside in the same geographic area of the state which constitutes a health district established by the Department of Public Health. The Governor is authorized but not required to appoint the remaining three members from recommendations submitted by the Private Rehabilitation Suppliers of Georgia, the Georgia Hospital Association, the Brain Injury Association of Georgia, the Medical Association of Georgia, and the Georgia State Medical Association. The Governor shall also establish initial terms of office for all 16 members of the board within the limitations of this subsection.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the commission, the vacancy shall be filled in the same manner as the original appointment and the successor shall serve for the unexpired term.

(c) Membership on the commission does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The Governor shall designate a chairperson of the commission from among the members, which chairperson shall serve in that position at the pleasure of the Governor. The commission may elect such other officers and committees as it considers appropriate.

(e) The commission, with the approval of the Governor, may employ such professional, technical, or clerical personnel as deemed necessary to carry out the purposes of this chapter. (Code 1981, § 15-21-143, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 1137, § 3; Ga. L. 2001, p. 4, § 15; Ga. L. 2002, p. 528, § 3; Ga. L. 2009, p. 453, § 1-14/HB 228; Ga. L. 2011, p. 705, § 5-2/HB 214; Ga. L. 2012, p. 303, § 3/HB 1146.)

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

15-21-144. Expense allowance and travel reimbursement of members of the fund.

Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. Expense allowances and other costs authorized in this Code section shall be paid from moneys in the trust fund. (Code 1981, § 15-21-144, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2002, p. 528, § 4.)

15-21-145. Duties of the commission.

(a) The commission shall do all of the following:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. The commission shall also meet on the call of the chairperson or the Governor;

(2) Maintain minutes of its meetings;

(3) Adopt rules and regulations for the transaction of its business;

(4) Accept applications for disbursements of available money from the trust fund;

(5) Maintain records of all expenditures of the commission, funds received as gifts and donations, and disbursements made from the trust fund; and

(6) Conform to the standards and requirements prescribed by the state accounting officer pursuant to Chapter 5B of Title 50.

(b) The commission shall utilize existing state resources and staff of participating departments whenever practicable. (Code 1981, § 15-21-145, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2002, p. 528, § 5; Ga. L. 2005, p. 694, § 24/HB 293.)

15-21-146. Recommendations of changes in state programs, statutes, policies, and budgets; standardization of care.

The commission may recommend to the Governor and the General Assembly changes in state programs, statutes, policies, budgets, and standards relating to the care and rehabilitation of persons with brain or spinal cord injuries, improve coordination among state agencies that provide care and rehabilitative services, and improve the condition of citizens who are in need of rehabilitative services. (Code 1981, § 15-21-146, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2002, p. 528, § 6.)

15-21-147. Acceptance of federal funds; disposition.

The commission may accept and solicit federal funds granted by Congress or executive order for the purposes of this article as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds does not commit state funds and does not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. All funds received in the manner described in this Code section shall be transmitted to the state treasurer for deposit in the trust fund to be disbursed as other moneys in such trust fund. (Code 1981, § 15-21-147, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2002, p. 528, § 7; Ga. L. 2010, p. 462, § 1/HB 1310; Ga. L. 2010, p. 863, § 3/SB 296.)

15-21-148. Creation of the Brain and Spinal Injury Trust Fund.

(a) There is created the Brain and Spinal Injury Trust Fund as a separate fund in the state treasury. The state treasurer shall credit to the trust fund all amounts transferred to such fund and shall invest the

trust fund moneys in the same manner as authorized for investing other moneys in the state treasury.

(b) The commission may authorize the disbursement of available money from the trust fund, after appropriation thereof, for purposes of providing care and rehabilitative services to citizens of the state who have survived neurotrauma with head or spinal cord injuries, to a person, entity, or program eligible pursuant to criteria to be set by such commission. The commission may also authorize the disbursement of trust fund money for the actual and necessary operating expenses that the commission incurs in performing its duties; provided, however, that such disbursements shall be kept at a minimum in furtherance of the primary purpose of the trust fund which is to disburse money to provide care and rehabilitative services for persons with brain or spinal cord injuries.

(c) No funds shall be disbursed from the trust fund to any person, entity, or program or for any purpose authorized in subsection (b) of this Code section until approved by the Governor; provided, however, that the Governor may not authorize the disbursement of funds to a person, entity, or program which the commission has not recommended for a grant. (Code 1981, § 15-21-148, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2002, p. 528, § 8; Ga. L. 2010, p. 863, § 3/SB 296.)

15-21-149. Fines; penalties.

(a) In every case in which any court in this state shall impose a fine, which shall be construed to include costs, for any violation of Code Section 40-6-391, relating to driving under the influence of alcohol or drugs, or for violations of ordinances of political subdivisions which have adopted by reference Code Section 40-6-391, there shall be imposed as an additional penalty a sum equal to 10 percent of the original fine.

(b) Such sums shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this chapter. (Code 1981, § 15-21-149, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2000, p. 1652, § 1.)

JUDICIAL DECISIONS

Fine improperly imposed. — Since no fine was imposed on the driving under the influence count, the $100 brain/spinal cord fee and the $25 driving under the influence victim surcharge should not have been imposed under O.C.G.A. §§ 15-21-149(a) and 15-21-150 because those fees were contingent upon the imposition of a fine. Johnson v. State, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Cited in Hannah v. State, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

15-21-150. Collection of fines; disposition of moneys collected.

The sums provided for in Code Section 15-21-149 shall be assessed and collected by the clerk or court officer charged with the duty of collecting moneys arising from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Brain and Spinal Injury Trust Fund Commission created in Code Section 15-21-143, to be deposited into the Brain and Spinal Injury Trust Fund. (Code 1981, § 15-21-150, enacted by Ga. L. 1998, p. 667, § 1; Ga. L. 2002, p. 528, § 9; Ga. L. 2005, p. ES3, § 9/HB 1EX.)

JUDICIAL DECISIONS

Fine improperly imposed. — Since no fine was imposed on the driving under the influence count, the $100 brain/spinal cord fee and the $25 driving under the influence victim surcharge should have been imposed under O.C.G.A. §§ 15-21-149(a) and 15-21-150 because those fees were contingent upon the imposition of a fine. Johnson v. State, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Cited in Hannah v. State, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

15-21-151. Additional fine for reckless driving; disposition.

(a) In every case in which any court in this state shall impose a fine, which shall be construed to include costs, for any violation of Code Section 40-6-390, relating to reckless driving, or for violations of ordinances of political subdivisions which have adopted by reference Code Section 40-6-390, there shall be imposed as an additional penalty a sum equal to 10 percent of the original fine. Such sums shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this chapter.

(b) The sums provided for in subsection (a) of this Code section shall be assessed and collected by the clerk or court officer charged with the duty of collecting moneys arising from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Brain and Spinal Injury Trust Fund Commission created in Code Section 15-21-142, to be deposited into the Brain and Spinal Injury Trust Fund. (Code 1981, § 15-21-151, enacted by Ga. L. 2014, p. 225, § 1/HB 870.)

Effective date. — This Code section became effective January 1, 2015.

Editor's notes. — The constitutional amendment (Ga. L. 2014, p. 225, § 2/HB 870), amending the State Constitution to add the offense of reckless driving to the offenses for which the General Assembly may impose additional penalties or fees to be paid into the Brain and Spinal Injury Trust Fund, was ratified at the general election held on November 4, 2014.

Ga. L. 2005, p. ES3, § 9/HB 1EX, repealed former Code Section 15-21-151, relating to failure to collect and delinquency.

The former Code section was based on Ga. L. 1998, p. 667, § 1.

15-21-152. Duty to collect; misdemeanor.

Any person whose duty it is to collect and remit the sums provided for in this article who refuses to so remit shall be guilty of a misdemeanor. (Code 1981, § 15-21-152, enacted by Ga. L. 1998, p. 667, § 1.)

ARTICLE 10

GEORGIA DRIVER'S EDUCATION COMMISSION

Editor's notes. — Ga. L. 2005, p. 1461, § 7/SB 226, not codified by the General Assembly, provides that this article is applicable to all traffic offenses committed on or after May 10, 2005.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-21-170. Short title.

This article shall be known and may be cited as "Joshua's Law." (Code 1981, § 15-21-170, enacted by Ga. L. 2005, p. 1461, § 2/SB 226.)

15-21-171. Definitions.

As used in this article, the term "commission" means the Georgia Driver's Education Commission created in Code Section 15-21-172. (Code 1981, § 15-21-171, enacted by Ga. L. 2005, p. 1461, § 2/SB 226.)

15-21-172. Georgia Driver's Education Commission established.

There is established the Georgia Driver's Education Commission, which is assigned to the Department of Driver Services for administrative purposes only, as prescribed in Code Section 50-4-3. (Code 1981, § 15-21-172, enacted by Ga. L. 2005, p. 1461, § 2/SB 226; Ga. L. 2006, p. 72, § 15/SB 465.)

15-21-173. Members; terms; appointment; vacancies; chairperson and other officers; employees.

(a) The Georgia Driver's Education Commission shall consist of eight members who shall serve for terms of four years, except that the members in office on April 21, 2006, shall serve the terms to which they were originally appointed. The State Board of Education shall appoint one member of the commission and the Department of Driver Services shall appoint two members of the commission. The director of the Governor's Office of Highway Safety shall appoint one member of the

commission. The remaining four members of the commission shall be appointed by the Governor, two of whom shall be public school driver's education providers and the other two shall be private driver's education providers. The Governor shall also establish initial terms of office for all members of the commission within the limitations of this subsection.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the commission, the vacancy shall be filled in the same manner as the original appointment and the successor shall serve for the unexpired term.

(c) Membership on the commission does not constitute a public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The Governor shall designate a chairperson of the commission from among the members, which chairperson shall serve in that position at the pleasure of the Governor. The commission may elect such other officers and committees as it considers appropriate.

(e) The commission, with the approval of the Governor, may employ such professional, technical, or clerical personnel as deemed necessary to carry out the purposes of this article. (Code 1981, § 15-21-173, enacted by Ga. L. 2005, p. 1461, § 2/SB 226; Ga. L. 2006, p. 72, § 15/SB 465; Ga. L. 2006, p. 343, § 1/SB 637; Ga. L. 2007, p. 47, § 15/SB 103.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "April 21, 2006," was substituted for "the effective date of this subsection" in the first sentence of subsection (a).

15-21-174. Commission members' expenses.

Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. (Code 1981, § 15-21-174, enacted by Ga. L. 2005, p. 1461, § 2/SB 226.)

15-21-175. Powers and duties generally.

(a) The commission shall do all of the following:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. The commission shall also meet on the call of the chairperson or the Governor;

(2) Maintain minutes of its meetings;

(3) Adopt rules and regulations for the transaction of its business;

(4) Accept applications for disbursements of available moneys;

(5) Maintain records of all expenditures of the commission, funds received as gifts and donations, and disbursements made; and

(6) Conform to the standards and requirements prescribed by the state accounting office pursuant to Chapter 5B of Title 50.

(b) The commission shall utilize existing state resources and staff of participating departments whenever practicable. (Code 1981, § 15-21-175, enacted by Ga. L. 2005, p. 1461, § 2/SB 226.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, in paragraph (a)(6) "accounting office" was substituted for "auditor" and "Chapter 5B" was substituted for "Chapter 6".

15-21-176. Commission recommendations to Governor and General Assembly.

The commission may recommend to the Governor and the General Assembly changes in state programs, statutes, policies, budgets, and standards relating to the provision of driver education and training in this state, with the objective of maximizing participation in driver's education and training and accident reduction. (Code 1981, § 15-21-176, enacted by Ga. L. 2005, p. 1461, § 2/SB 226.)

15-21-177. Commission acceptance of federal funds, gifts and donations.

The commission may accept federal funds granted by Congress or executive order for the purposes of this article as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds do not commit state funds and do not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. (Code 1981, § 15-21-177, enacted by Ga. L. 2005, p. 1461, § 2/SB 226.)

15-21-178. Commission disbursement of funds for driver education and training.

The commission may authorize the disbursement of available funds from moneys appropriated to the commission by the General Assembly

for purposes of providing driver education and training to a person, entity, or program eligible pursuant to criteria to be set by the commission. Nothing in this Code section shall be construed to limit the authority of the Department of Driver Services under Chapter 13 of Title 43, "The Driver Training School and Commercial Driver Training School License Act." (Code 1981, § 15-21-178, enacted by Ga. L. 2005, p. 1461, § 2/SB 226; Ga. L. 2006, p. 72, § 15/SB 465.)

15-21-179. (Repealed effective June 30, 2016) Additional penalty for violation of traffic laws or ordinances.

(a) In every case in which any court in this state shall impose a fine or bond payment, which shall be construed to include costs, for any violation of the traffic laws of this state or for violations of ordinances of political subdivisions which have adopted by reference the traffic laws of this state, there shall be imposed as an additional penalty a sum equal to 1.5 percent of the original fine.

(b) Such sums shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this article.

(c) This Code section shall be repealed in its entirety on June 30, 2016, unless extended by an Act of the General Assembly. (Code 1981, § 15-21-179, enacted by Ga. L. 2005, p. 1461, § 2/SB 226; Ga. L. 2008, p. 846, § 13/HB 1245; Ga. L. 2013, p. 741, § 1/SB 231.)

The 2013 amendment, effective May 6, 2013, substituted "1.5 percent" for "5 percent" in the last sentence of subsection (a) and substituted "June 30, 2016" for "June 30, 2013" in the middle of subsection (c).

OPINIONS OF THE ATTORNEY GENERAL

Applicability. — Additional penalty imposed by O.C.G.A. § 15-21-179 applies, unless there is a specific exception, when a court imposes a fine for a violation of any traffic law and is not limited to violations of those laws that are set forth in O.C.G.A. Ch. 6, T. 40. 2005 Op. Att'y Gen. No. 2005-4.

15-21-180. Disposition of funds from additional penalties.

(a) The sums provided for in Code Section 15-21-179 shall be assessed and collected by the clerk or other court officer charged with the duty of collecting moneys from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Office of the State Treasurer to be deposited into the general fund of the state treasury.

(b) Any person whose duty it is to collect and remit the sums provided for in this article who refuses to so remit shall be guilty of a

misdemeanor. (Code 1981, § 15-21-180, enacted by Ga. L. 2005, p. 1461, § 2/SB 226; Ga. L. 2010, p. 863, § 2/SB 296.)

15-21-181. Report of funds received from additional penalties; annual reporting requirement; funds made available to Driver's Education Commission.

(a) As soon as practicable after the end of each fiscal year, the Office of the State Treasurer shall report the amount of funds received pursuant to Code Section 15-21-179 to the Office of Planning and Budget and the commission. It is the intent of the General Assembly that, subject to appropriation, an amount equal to such proceeds received from such fines in any fiscal year shall be made available during the following fiscal year to the commission for the purposes set forth in Code Section 15-21-178.

(b) Not later than October 1 of each year, the commission shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, as well as the committee chairpersons for the standing committees in the Senate and the House of Representatives that are assigned issues related to motor vehicles. The report shall include the amount of funds collected from the additional penalty imposed under this article for the previous three fiscal years, the amount of such funds appropriated to the commission for each such corresponding year, and the manner and purposes for which such funds have been expended. (Code 1981, § 15-21-181, enacted by Ga. L. 2005, p. 1461, § 2/SB 226; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2013, p. 741, § 2/SB 231.)

The 2013 amendment, effective May 6, 2013, designated the existing provisions as subsection (a) and added subsection (b).

ARTICLE 11

SAFE HARBOR FOR SEXUALLY EXPLOITED CHILDREN FUND

Delayed effective date. — Ga. L. 2015, p. SB 8, § 6-1(b)/SB 8, not codified by the General Assembly, provides that this article "shall become effective on January 1, 2017, provided that a constitutional amendment is passed by the General Assembly and is ratified by the voters in the November, 2016, General Election amending the Constitution of Georgia to authorize the General Assembly to provide specific funding to the Safe Harbor for Sexually Exploited Children Fund. If such an amendment to the Constitution of Georgia is not so ratified, then Part 3 of this Act shall not become effective and shall stand repealed by operation of law on January 1, 2017."

Editor's notes. — Ga. L. 2015, p. 675, § 1-1/SB 8, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Safe Harbor/Rachel's Law Act.'"

Ga. L. 2015, p. 675, § 1-2/SB 8, not codified by the General Assembly, provides that: "(a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized children serves to retraumatize children and increases their

feelings of low self esteem, making the process of recovery more difficult. The General Assembly acknowledges that both federal and state laws recognize that sexually exploited children are the victims of crime and should be treated as victims. The General Assembly finds that sexually exploited children deserve the protection of child welfare services, including family support, crisis intervention, counseling, and emergency housing services. The General Assembly finds that it is necessary and appropriate to adopt uniform and reasonable assessments and regulations to help address the deleterious secondary effects, including but not limited to, prostitution and sexual exploitation of children, associated with adult entertainment establishments that allow the sale, possession, or consumption of alcohol on premises and that provide to their patrons performances and interaction involving various forms of nudity. The General Assembly finds that a correlation exists between adult live entertainment establishments and the sexual exploitation of children. The General Assembly finds that adult live entertainment establishments present a point of access for children to come into contact with individuals seeking to sexually exploit children. The General Assembly further finds that individuals seeking to exploit children utilize adult live entertainment establishments as a means of locating children for the purpose of sexual exploitation. The General Assembly acknowledges that many local governments in this state and in other states found deleterious secondary effects of adult entertainment establishments are exacerbated by the sale, possession, or consumption of alcohol in such establishments.

"(b) The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state. The purpose and intended effect of this Act in imposing assessments and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment of the United States Constitution or Article I, Section I, Paragraph V of the Constitution of this state."

15-21-200. (For effective date, see note.) Authority.

This article is enacted pursuant to Article III, Section IX, Paragraph VI(o) of the Constitution, which provision authorizes additional penalty assessments for violations relating to certain sexual crimes, authorizes assessments on certain businesses, and provides that the proceeds derived therefrom may be used for the purpose of meeting the costs of care and rehabilitative and social services for certain citizens of this state who have been sexually exploited. (Code 1981, § 15-21-200, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-201. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) "Adult entertainment establishment" means any place of business or commercial establishment where alcoholic beverages of any kind are sold, possessed, or consumed wherein:

(A) The entertainment or activity therein consists of nude or substantially nude persons dancing with or without music or engaged in movements of a sexual nature or movements simulating sexual intercourse, oral copulation, sodomy, or masturbation;

(B) The patron directly or indirectly is charged a fee or required to make a purchase in order to view entertainment or activity which consists of persons exhibiting or modeling lingerie or similar undergarments; or

(C) The patron directly or indirectly is charged a fee to engage in personal contact by employees, devices, or equipment, or by personnel provided by the establishment.

Such term shall include, but shall not be limited to, bathhouses, lingerie modeling studios, and related or similar activities. Such term shall not include businesses or commercial establishments which have as their sole purpose the improvement of health and physical fitness through special equipment and facilities, rather than entertainment.

(2) "Commission" means the Safe Harbor for Sexually Exploited Children Fund Commission.

(3) "Fund" means the Safe Harbor for Sexually Exploited Children Fund.

(4) "Safe house" means a licensed residential facility that provides safe and secure shelter.

(5) "Sexually explicit conduct" shall have the same meaning as set forth in Code Section 16-12-100.

(6) "Sexually exploited child" means a person who is younger than 18 years of age who:

(A) Has been the victim of trafficking of persons for sexual servitude in violation of Code Section 16-5-46;

(B) Has engaged in sodomy, prostitution, solicitation of sodomy, or masturbation for hire; or

(C) Has been the victim of sexually explicit conduct for the purpose of producing any print or visual medium.

(7) "Substantially nude" means dressed in a manner so as to display any portion of the female breast below the top of the areola or displaying any portion of any person's pubic hair, anus, cleft of the buttocks, vulva, or genitals.

(8) "Visual medium" shall have the same meaning as set forth in Code Section 16-12-100. (Code 1981, § 15-21-201, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-202. (For effective date, see note.) Commission established; fund creation; disbursement of proceeds.

(a) There is established the Safe Harbor for Sexually Exploited Children Fund Commission which is assigned to the Division of Family and Children Services of the Department of Human Resources for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) There is created the Safe Harbor for Sexually Exploited Children Fund as a separate fund in the state treasury. The state treasurer shall credit to the fund all amounts transferred to the fund and shall invest the fund moneys in the same manner as authorized for investing other moneys in the state treasury.

(c) The commission may authorize the disbursement of available money from the fund, after appropriation thereof, for purposes of providing care, rehabilitative services, residential housing, health services, and social services, including establishing safe houses, to sexually exploited children and to a person, entity, or program eligible pursuant to criteria to be set by the commission. The commission shall also consider disbursement of available money from the fund to a person, entity, or program devoted to awareness and prevention of becoming a sexually exploited child. The commission may also authorize the disbursement of fund money for the actual and necessary operating expenses that the commission incurs in performing its duties; provided, however, that such disbursements shall be kept at a minimum in furtherance of the primary purpose of the fund, which is to disburse money to provide care and rehabilitative and social services for sexually exploited children. (Code 1981, § 15-21-202, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-203. (For effective date, see note.) Commission membership; administration.

(a) The commission shall consist of eight members. Seven of the members shall serve for terms of two years, except that with respect to the first members appointed, two members shall be appointed for terms of three years, four members for terms of two years, and one member for a term of one year. The director of the Division of Family and Children Services of the Department of Human Services shall be a permanent member of the commission. The chairperson of the Criminal Justice Coordinating Council, the commissioner of behavioral health and

developmental disabilities, and the director of the Division of Family and Children Services of the Department of Human Services shall each appoint one member of the commission; the President of the Senate and the Speaker of the House of Representatives shall each appoint two of the remaining four members. The Governor shall establish initial terms of office for all members of the commission within the limitations of this subsection.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the commission, the vacancy shall be filled in the same manner as the original appointment, and the successor shall serve for the unexpired term.

(c) Membership on the commission shall not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The Governor shall designate a chairperson of the commission from among the members, which chairperson shall serve in that position at the pleasure of the Governor. The commission may elect such other officers and committees as it considers appropriate.

(e) The commission, with the approval of the Governor, may employ such professional, technical, or clerical personnel as deemed necessary to carry out the purposes of this article. (Code 1981, § 15-21-203, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-204. (For effective date, see note.) Compensation.

Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. Expense allowances and other costs authorized in this Code section shall be paid from moneys in the fund. (Code 1981, § 15-21-204, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-205. (For effective date, see note.) Commission meetings and responsibilities.

(a) The commission shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties on the call of the chairperson or the Governor;

(2) Maintain minutes of its meetings;

(3) Adopt rules and regulations for the transaction of its business;

(4) Accept applications for disbursements of available money from the fund;

(5) Develop a state-wide protocol for helping to coordinate the delivery of services to sexually exploited children;

(6) Provide oversight and accountability for any program that receives disbursements from the fund;

(7) Maintain records of all its expenditures, funds received as gifts and donations, and disbursements made from the fund; and

(8) Conform to the standards and requirements prescribed by the state accounting officer pursuant to Chapter 5B of Title 50.

(b) The commission shall utilize existing state resources and staff of participating departments whenever practicable. (Code 1981, § 15-21-205, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-206. (For effective date, see note.) Recommendations authorized.

The commission may recommend to the Governor and the General Assembly changes in state programs, laws, policies, budgets, and standards relating to the care and rehabilitation of sexually exploited children, changes to improve coordination among state agencies that provide care and rehabilitative and social services to sexually exploited children, and changes to improve the condition of sexually exploited children who are in need of rehabilitative and social services. (Code 1981, § 15-21-206, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-207. (For effective date, see note.) Funding sources.

The commission may accept and solicit federal funds granted by Congress or executive order for the purposes of this article as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds shall not commit state funds and shall not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. All such funds received in the manner described in this Code section shall be transmitted to the state treasurer for deposit into the fund to be disbursed as other moneys in the fund. (Code 1981, § 15-21-207, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-208. (For effective date, see note.) Financial penalty; collection.

(a) In every case in which any court in this state shall impose a fine, which shall be construed to include costs, for trafficking a person for sexual servitude in violation of Code Section 16-5-46 or any violation of Code Section 16-6-10, 16-6-11, 16-6-12, 16-6-14, 16-6-15, 16-6-16, or 16-12-100, there shall be imposed an additional penalty of $2,500.00 if the defendant was 18 years of age or older at the time of the offense.

(b) Such sums shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this chapter.

(c) The sums provided for in this Code section shall be assessed and collected by the clerk or court officer charged with the duty of collecting moneys arising from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Safe Harbor for Sexually Exploited Children Fund Commission, to be deposited into the Safe Harbor for Sexually Exploited Children Fund.

(d) Any person whose duty it is to collect or remit the sums provided for in this Code section who intentionally refuses to collect or remit such sums shall be guilty of a misdemeanor. (Code 1981, § 15-21-208, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

15-21-209. (For effective date, see note.) State operation assessment against adult entertainment establishments; determination of obligation; use of funds; administration.

(a) By April 30 of each calendar year, each adult entertainment establishment shall pay to the commissioner of revenue a state operation assessment equal to the greater of 1 percent of the previous calendar year's gross revenue or $5,000.00. This state assessment shall be in addition to any other fees and assessments required by the county or municipality authorizing the operation of an adult entertainment business.

(b) The previous year's gross revenue of an adult entertainment establishment shall be determined based upon tax returns filed with the Department of Revenue. The commissioner of revenue may, by rule or regulation, require other reports or returns to be filed by an adult entertainment establishment as he or she deems appropriate.

(c) The assessments collected pursuant to this Code section shall be remitted to the Safe Harbor for Sexually Exploited Children Fund Commission, to be deposited into the Safe Harbor for Sexually Exploited Children Fund.

(d) The assessments imposed by this Code section shall be assessed and collected in the same manner as taxes due the state in Title 48 and appeals of such assessments shall be within the jurisdiction of the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50.

(e) The commissioner of revenue shall be authorized to promulgate any rules and regulations he or she deems necessary to implement and administer the provisions of this Code section. (Code 1981, § 15-21-209, enacted by Ga. L. 2015, p. 675, § 3-1/SB 8.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

CHAPTER 21A

JUDICIAL ACCOUNTING

Sec.
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15-21A-3. Georgia Superior Court Clerks' Cooperative Authority as custodial trustee.
15-21A-4. Procedure for reporting and remittance of funds.
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15-21A-8. Penalty for failure to remit funds.

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 337 et seq.

15-21A-1. Legislative findings and intent.

(a) The General Assembly finds that over the years, at various times, there have been enacted into the law and Constitution of this state numerous provisions relating to court costs, fees, and criminal penalty and bond surcharges for various stated purposes and that additional costs, fees, and surcharges may be added in the future. Because of the seriatim nature of these enactments, little or no consideration has been given to the interaction of the enacting provisions. There exists a lack of fiscal data concerning such fees. State law has in some cases provided insufficient guidance for local officials with respect to the priority and manner of distribution of such costs, fees, and surcharges. There exists a need for a centralized agency to act as the collecting and remitting agent for such costs, fees, and surcharges in order to provide for uniform practices and fiscal accountability with respect to such collection and remittance.

(b) It is the intent of this chapter to meet the needs identified in subsection (a) of this Code section and to provide for certain new fees and surcharges in order that funds may be made available for appropriation and may be appropriated for purposes of indigent defense. (Code 1981, § 15-21A-1, enacted by Ga. L. 2005, p. ES3, § 10/HB 1EX.)

15-21A-2. "Authority" defined.

As used in this chapter, the term "authority" means the Georgia Superior Court Clerks' Cooperative Authority established pursuant to Code Section 15-6-94. (Code 1981, § 15-21A-2, enacted by Ga. L. 2005, p. ES3, § 10/HB 1EX.)

15-21A-3. Georgia Superior Court Clerks' Cooperative Authority as custodial trustee.

(a) As used in this Code section the term "court" means all trial courts within this state including, but not limited to, superior, juvenile, state, magistrate, probate, municipal, and special courts, whether called mayor's courts, recorder's courts, police courts, civil courts, traffic courts, or miscellaneous courts or any other trial court created in this state under any other name.

(b) The authority shall act as collecting and remitting agent with respect to the costs, fees, and surcharges for certain costs, fees, or surcharges by any clerk of court or other officer or agent of any court. The authority in performing this function shall receive and disburse such funds only in the capacity of a custodial trustee, and such funds shall not in the process of receipt and disbursement become funds of the authority. The costs, fees, and surcharges subject to this Code section are:

(1) The additional divorce case filing fee under Code Section 15-6-77.4 and the additional marriage license fee under Code Section 15-9-60.1;

(2) The surcharge on fines and bonds imposed for the training of law enforcement and prosecutorial officers and for indigent defense purposes under Code Section 15-21-73;

(3) The additional penalties imposed in cases of driving under the influence for purposes of state crime victims compensation under Code Section 15-21-112;

(4) The additional penalties imposed in cases of driving under the influence for purposes of the Brain and Spinal Injury Trust Fund under Code Section 15-21-149;

(5) Fees collected by the courts under Code Section 42-8-34; and

(6) Local victim assistance funds collected pursuant to Article 8 of Chapter 21 of this title. (Code 1981, § 15-21A-3, enacted by Ga. L. 2005, p. ES3, § 10/HB 1EX.)

15-21A-4. Procedure for reporting and remittance of funds.

(a)(1) Each clerk of any court or any other officer or agent of any court receiving any funds required to be remitted to the authority under this chapter on or after July 1, 2004, shall remit all such funds to the authority by the end of the month following the month in which such funds are received. Each clerk of any court or other officer or agent of any court receiving any funds required to be reported to the authority by this chapter or the rules and regulations of the authority promulgated in accordance with Code Section 15-21A-7 shall report such funds to the authority no later than 60 days after the last day of the month in which such funds are received.

(2) The chief judge of superior court for each county shall have the authority to require compliance with this chapter and with the rules and regulations of the authority promulgated by the authority in accordance with Code Section 15-21A-7 by any clerk, officer, or agent of any court within the county. If any court is more than 60 days delinquent or is habitually delinquent in remitting any funds or reports required under this chapter or by the rules and regulations of the authority promulgated in accordance with Code Section 15-21A-7, the authority shall notify the chief judge of superior court of the county in which the court is located.

(b) The authority shall prescribe uniform procedures and forms for the reporting and remittance of all funds subject to this chapter or the rules and regulations of the authority promulgated in accordance with Code Section 15-21A-7; and all clerks or other officers or agents remitting or reporting such funds shall use the prescribed procedures and forms in reporting and remitting funds to the authority.

(c) The authority shall prescribe uniform rules, procedures, and forms relative to the partial or installment collection and remittance of funds subject to reporting or remittance to the authority under this chapter or rules and regulations promulgated by the authority in accordance with Code Section 15-21A-7. Any funds held by any court or unit of local government on July 1, 2004, consisting of previously collected partial or installment payments shall be subject to the rules, procedures, and forms so prescribed and shall be remitted to the authority to the extent provided for in such rules and procedures. Funds collected that are partial or installment payments of costs, fees, and surcharges that are required by this chapter to be remitted to the authority shall be remitted to the authority by the end of the month following the month in which they were collected; provided, however, that the authority is authorized to provide by rules and regulations for a longer period of time for remitting such funds not to exceed six months.

(d) The authority shall remit all funds collected to the designated receiving entities or general fund of the state treasury within 60 days of receiving such funds. (Code 1981, § 15-21A-4, enacted by Ga. L. 2005, p. ES3, § 10/HB 1EX; Ga. L. 2006, p. 710, § 2/SB 203.)

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 61 (2006).

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 342.

15-21A-5. Retention of funds by authority; remittance to general fund of state treasury; accumulation of interest.

(a) The authority shall be entitled to retain from the funds received by the authority under Code Sections 15-21A-3 and 15-21A-6 an amount equal to 1 percent of such funds, but in no event more than $500,000.00 per fiscal year, to reimburse the authority for its costs in administering this chapter. The net proceeds, after deduction of such administrative costs, from the funds received by the authority under Code Section 15-21A-3 shall be remitted by the authority as follows:

(1) The net proceeds received pursuant to paragraph (1) of subsection (b) of Code Section 15-21A-3 shall be remitted to the general fund of the state treasury;

(2) The net proceeds received pursuant to paragraph (2) of subsection (b) of Code Section 15-21A-3 shall be remitted to the general fund of the state treasury;

(3) The net proceeds received pursuant to paragraph (3) of subsection (b) of Code Section 15-21A-3 shall be remitted to the Georgia Crime Victims Compensation Board to be deposited into the Georgia Crime Victims Emergency Fund;

(4) The net proceeds received pursuant to paragraph (4) of subsection (b) of Code Section 15-21A-3 shall be remitted to the Brain and Spinal Injury Trust Fund Commission for deposit into the Brain and Spinal Injury Trust Fund;

(5) The net proceeds received pursuant to paragraph (5) of subsection (b) of Code Section 15-21A-3 shall be remitted to the general fund of the state treasury; and

(6) The net proceeds received pursuant to paragraph (6) of subsection (b) of Code Section 15-21A-3 shall be remitted pursuant to Code Section 15-21-132 for local victim assistance.

(b) The net proceeds received pursuant to Code Section 15-21A-6 shall be remitted to the general fund of the state treasury.

(c) Any interest earned on funds subject to this chapter while in the custody of the authority shall be remitted to the general fund of the state treasury. (Code 1981, § 15-21A-5, enacted by Ga. L. 2005, p. ES3, § 10/HB 1EX; Ga. L. 2005, p. 60, § 15/HB 95.)

15-21A-6. Additional filing fees; application fee for indigent defense services; remittance of funds.

(a) In addition to all other legal costs, there shall be charged to the filing party and collected by the clerk an additional filing fee of $15.00 in each civil action or case filed in the superior, state, recorder's, mayor's, and magistrate courts except that municipalities, counties, and political subdivisions shall be exempt from such fee. Without limiting the generality of the foregoing, such fee shall apply to all adoptions, certiorari, trade name registrations, applications for change of name, and all other proceedings of a civil nature. Any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned shall be subject to such fee, whether such matter is contested or not.

(b)(1) As used in this subsection, the term "civil action" means:

(A) With regard to decedents' estates, the following proceedings: petition for letters of administration; petition to probate a will in solemn form; petition for an order declaring no administration necessary; petition to probate a will in solemn form and for letters of administration with will annexed; and petition for year's support;

(B) With regard to a minor guardianship matter as set forth in paragraph (1) of subsection (f) of Code Section 15-9-60, the proceeding by which the jurisdiction of the probate court is first invoked;

(C) With regard to an adult guardianship matter as set forth in paragraph (1) of subsection (g) of Code Section 15-9-60, the proceeding by which the jurisdiction of the probate court is first invoked; and

(D) An application for writ of habeas corpus.

(2) In addition to all other legal costs, there shall be charged to the filing party and collected by the clerk an additional fee of $15.00 in each civil action filed in the probate court. For the purposes of the imposition of the civil filing fee required by this subsection, the probate court shall collect the civil filing fee on each proceeding listed in subparagraph (A) of paragraph (1) of this subsection involving a decedent but once only in a guardianship matter involving the same

ward or an application for writ of habeas corpus involving the same applicant.

(c) Any person who applies for or receives legal defense services under Chapter 12 of Title 17 shall pay the entity providing such services a single fee of $50.00 for the application for, receipt of, or application for and receipt of such services. The application fee shall not be imposed if the payment of the fee is waived by the court. The court shall waive the fee if it finds that the applicant is unable to pay the fee or that measurable hardship will result if the fee is charged. If the application fee required by this subsection has not been paid prior to the time the defendant is sentenced, the court shall impose such fee as a condition of probation.

(d) Each clerk of court, each indigent defense program, or any other officer or agent of any court receiving any funds subject to this Code section shall collect the fees provided for in subsection (c) of this Code section and, if the governing authority has a procedure to verify the applicant's income as set forth in Code Section 17-12-80, shall pay such moneys over to the entity providing legal defense services under Chapter 12 of Title 17 by the last day of the month after the month of collection, and such funds shall not be subject to payment to the authority. If the governing authority does not have such verification procedure, the moneys shall be paid over to the authority by the last day of the month after the month of collection, to be deposited by the authority into the general fund of the state treasury.

(e) A public entity other than an entity providing legal defense services under Chapter 12 of Title 17 may charge, in addition to any other fee or surcharge authorized by law, a $50.00 application fee unless such fee is waived by the court for inability to pay or measurable hardship. If the application fee required by this subsection has not been paid prior to the time the defendant is sentenced, the court shall impose such fee as a condition of probation. Any such fee shall be retained by the entity providing such services or used as otherwise provided by law and shall not be subject to payment to the authority or deposit into the state treasury.

(f) For the purposes of this Code section, a county or municipality that provides indigent defense services or that contracts with a circuit public defender office for the provision of indigent defense services in courts other than the superior and juvenile court shall be deemed to be the entity providing the legal defense services and shall be entitled to impose and collect the application fee authorized by subsection (e) of this Code section. (Code 1981, § 15-21A-6, enacted by Ga. L. 2005, p. ES3, § 10/HB 1EX; Ga. L. 2006, p. 710, § 3/SB 203; Ga. L. 2006, p. 752, § 1/SB 503; Ga. L. 2008, p. 846, § 14/HB 1245; Ga. L. 2010, p. 9, § 1-43.1/HB 1055.)

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 61 (2006).

JUDICIAL DECISIONS

Cited in Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 21A Am. Jur. 2d, Criminal Law, § 848.

C.J.S. — 24 C.J.S., Criminal Law, §§ 2151, 2152.

15-21A-6.1. Judicial operations fund fee; collection and reporting procedure.

(a) In addition to all other legal costs, there shall be charged to the filing party and collected by the clerk an additional filing fee of $125.00, to be known as a judicial operations fund fee, in each civil action or case filed in a superior court except that the state, including, but not limited to, its departments, agencies, boards, bureaus, commissions, public corporations, and authorities, municipalities, counties, and political subdivisions shall be exempt from such fee. Without limiting the generality of the foregoing, such fee shall apply to all adoptions, certiorari, trade name registrations, applications for change of name, and all other proceedings of a civil nature. Any matter which is docketed upon the official dockets of the superior court and to which a number is assigned shall be subject to such fee, whether such matter is contested or not; provided, however, that the judicial operations fund fee shall not apply to the issuance of certificates of appointment and reappointment of notaries public.

(b) Each superior court clerk shall collect the fees provided in this Code section and the moneys shall be paid over to the authority by the last day of the month after the month of collection, to be deposited by the authority into the general fund of the state treasury.

(c) The authority shall, on a quarterly basis, make a report and accounting of all funds collected pursuant to this Code section and shall submit such report and accounting to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office no later than 60 days after the last day of the preceding quarter. (Code 1981, § 15-21A-6.1, enacted by Ga. L. 2010, p. 9, § 1-44/HB 1055; Ga. L. 2011, p. 24, § 3/HB 41; Ga. L. 2014, p. 866, § 15/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "House Budget and Research Office" for "House Budget Office" and substituted "Senate Budget and Evaluation Office" for "Senate Budget Office" near the end of subsection (c).

Editor's notes. — Ga. L. 2011, p. 24, § 4/HB 41, not codified by the General Assembly, provides, in part, that: "This Act shall apply retroactively to all cases for which fees have not been assessed."

OPINIONS OF THE ATTORNEY GENERAL

Application to clerks of superior court. — Judicial operations fund fee imposed by O.C.G.A. § 15-21A-6.1(a) applies to the fee to be remitted to clerks of superior court for the issuance of certificates of appointment and reappointment to notaries public. 2010 Op. Att'y Gen. No. 10-3.

15-21A-6.2. Exemption from judicial operations fund fee; collection and reporting procedures.

(a) In addition to all other legal costs, there shall be charged to the filing party and collected by the clerk an additional filing fee of $125.00, to be known as a judicial operations fund fee, in each civil action or case filed in a state court except that the state, including, but not limited to, its departments, agencies, boards, bureaus, commissions, public corporations, and authorities, municipalities, counties, and political subdivisions shall be exempt from such fee. Without limiting the generality of the foregoing, such fee shall apply to any matter which is docketed upon the official dockets of the state court and to which a number is assigned, whether such matter is contested or not.

(b) Each state court clerk shall collect the fees provided in this Code section and the moneys due the authority shall be paid over to the authority by the last day of the month after the month of collection with $75.00 of these moneys paid to the authority to be deposited by the authority into the general fund of the state treasury and $50.00 of these moneys shall be retained by the local governing authority.

(c) The authority shall, on a quarterly basis, make a report and accounting of all funds collected pursuant to this Code section and shall submit such report and accounting to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office no later than 60 days after the last day of the preceding quarter. (Code 1981, § 15-21A-6.2, enacted by Ga. L. 2010, p. 9, § 1-44/HB 1055; Ga. L. 2014, p. 866, § 15/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "House Budget and Research Office" for "House Budget Office" and substituted "Senate Budget and Evaluation Office" for "Senate Budget Office" near the end of subsection (c).

15-21A-7. Rules, regulations, reporting, and accounting.

(a) As used in this Code section the term "court" means all trial courts within this state including, but not limited to, superior, juvenile, state, magistrate, probate, municipal, and special courts, whether called mayor's courts, recorder's courts, police courts, civil courts, traffic courts, or miscellaneous courts or any other trial court created in this state under any other name.

(b) The authority shall promulgate rules and regulations for the administration of this chapter. Such rules and regulations shall include but not be limited to a reporting and accounting system for all court fines and fees and all surcharges on and deductions from any court fines and fees that are authorized to be collected or disbursed in any court. The authority shall develop a system that employs controls necessary to determine the accuracy of the fine and fee collections and disbursement by each clerk of court or other officer or agent of any court receiving any fines and fees. No later than 60 days after the end of the last day of each month, each such clerk of court and, if there is no clerk of court, any court officer, judge, or other agent of the court shall report to the authority on a reporting system prescribed by the authority. Any entity doing business with any court and all agencies and instrumentalities of the state shall provide any information or data requested by the authority in a format prescribed by the authority by rule or regulation. The authority is authorized to make inquiries to clerks of court, court officers, judges, or agents of any court and agencies or instrumentalities of the state as well as any other parties for the purpose of determining the accuracy of any fines and fees collected or disbursed by a court and is authorized where it determines appropriate to conduct audits of any parties to assist in ensuring the accuracy of the system developed by the authority.

(c) The authority shall, on a quarterly basis, make a detailed report and accounting of all fines and fees collected and remitted by any court and shall submit such report and accounting to the Legislative Oversight Committee for the Georgia Public Defender Council, the Office of Planning and Budget, the Chief Justice of the Supreme Court of Georgia, the House Budget and Research Office, and the Senate Budget and Evaluation Office no later than 60 days after the last day of the preceding quarter. (Code 1981, § 15-21A-7, enacted by Ga. L. 2005, p. ES3, § 10/HB 1EX; Ga. L. 2006, p. 710, § 4/SB 203; Ga. L. 2008, p. VO1, § 1-8/HB 529; Ga. L. 2010, p. 878, § 15/HB 1387; Ga. L. 2014, p. 866, § 15/SB 340; Ga. L. 2015, p. 519, § 8-7/HB 328.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "House Budget and Research Office" for "House Budget Office" and substituted "Senate Budget and Evaluation Office" for "Senate Budget Office" near the end of subsection (c).

The 2015 amendment, effective July 1, 2015, deleted "Standards" following "Defender" near the middle of subsection (c).

Editor's notes. — Ga. L. 2008, p. VO1, § 1-8/HB 529, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 61 (2006).

15-21A-8. Penalty for failure to remit funds.

Any clerk of court or any other officer or agent receiving any funds subject to this chapter who knowingly fails to pay over any such funds to the authority as required by this chapter, after receiving notice from the authority that such funds are delinquent, shall be guilty of a misdemeanor, except that if the amount of funds knowingly not paid over is $10,000.00 or more then such person shall be guilty of a felony and punished by imprisonment for not less than one nor more than ten years. The offense created by this Code section shall not merge with any other offense. (Code 1981, § 15-21A-8, enacted by Ga. L. 2005, p. ES3, § 10/HB 1EX.)

CHAPTER 22

JUDICIAL, DISTRICT ATTORNEY, AND CIRCUIT PUBLIC DEFENDER COMPENSATION COMMISSION

Sec.
15-22-1. Creation of Commission.
15-22-2. Composition of commission; term of members; vacancies; designation of chairperson; election of officers; staff support.
15-22-3. Meetings; quorum; expense allowance.
15-22-4. Duties; powers; utilization of resources.
15-22-5. Sunset.

Effective date. — The chapter became effective May 6, 2015.

Editor's notes. — The former chapter consisted of Code Sections 15-22-1 through 15-22-8, relating to compensation of judges of courts of limited jurisdiction, was based on Ga. L. 1982, p. 1737 and Ga. L. 1983, p. 3, § 12, and was repealed by Ga. L. 1983, p. 884, § 7-1, effective June 30, 1983.

15-22-1. Creation of Commission.

(a) There is created the Judicial, District Attorney, and Circuit Public Defender Compensation Commission for the purpose of conducting periodic comprehensive reviews of all aspects of compensation paid to justices, judges, district attorneys, and circuit public defenders.

(b) As used in this chapter, the term "commission" means the Judicial, District Attorney, and Circuit Public Defender Compensation Commission. (Code 1981, § 15-22-1, enacted by Ga. L. 2015, p. 919, § 3-1/HB 279.)

15-22-2. Composition of commission; term of members; vacancies; designation of chairperson; election of officers; staff support.

(a) The commission shall consist of five members. The Governor shall appoint two citizen members, one of whom shall have experience in executive compensation who is not an attorney. The Chief Justice of the Supreme Court shall appoint one member who shall be currently serving or be retired from serving as a judge or justice in this state. The Lieutenant Governor and the Speaker of the House of Representatives shall each appoint one member, neither of whom shall be attorneys. The chairperson of the Senate Appropriations Committee and the chairperson of the House Committee on Appropriations shall serve as ex officio nonvoting members of the commission.

(b) Each member of the commission shall be appointed to serve for a term of four years or until his or her successor is duly appointed. A member may be appointed to succeed himself or herself on the commission. If a member of the commission is an elected or appointed official, the member shall be removed from the commission if the member no longer serves as such elected or appointed official.

(c) Vacancies on the commission shall be filled by appointment in the same manner as the original appointment. An appointment to fill a vacancy, other than by expiration of a term of office, shall be for the balance of the unexpired term.

(d) The Governor shall designate the chairperson of the commission. The commission may elect other officers as it deems necessary. The chairperson of the commission may designate and appoint committees from among the membership of the commission as well as appoint other persons to perform such functions as he or she may determine to be necessary as relevant to and consistent with this chapter. The chairperson shall only vote to break a tie.

(e) The commission shall be attached for administrative purposes only to the Criminal Justice Coordinating Commission. The Criminal Justice Coordinating Commission shall provide staff support for the commission and shall use any funds specifically appropriated to it to support the work of the commission. (Code 1981, § 15-22-2, enacted by Ga. L. 2015, p. 919, § 3-1/HB 279.)

15-22-3. Meetings; quorum; expense allowance.

(a) The commission may conduct meetings at such places and times as it deems necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this chapter. The commission shall hold meetings at the call of the chairperson. The commission shall meet not less than twice every year.

(b) A quorum for transacting business shall be a majority of the members of the commission.

(c) Any legislative members of the commission shall receive the allowances provided for in Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees. Members of the commission who are state officials, other than legislative members, or state employees shall receive no compensation for their services on the commission, but they shall be reimbursed for expenses incurred by them in the performance of their duties as members of the commission in the same

manner as they are reimbursed for expenses in their capacities as state officials or state employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available to their respective departments. All other funds necessary to carry out this subsection shall come from funds appropriated to the Senate and the House of Representatives. (Code 1981, § 15-22-3, enacted by Ga. L. 2015, p. 919, § 3-1/HB 279.)

15-22-4. Duties; powers; utilization of resources.

(a) The commission shall have the following duties:

(1) To review the conditions, needs, issues, and problems related to the efficient use of resources and caseload balance of the justice system in this state and the compensation paid to justices, judges, district attorneys, and circuit public defenders; issue a report on the same to the executive counsel of the Governor, the Office of Planning and Budget, and the chairpersons of the House Committee on Appropriations, the Senate Appropriations Committee, the House Committee on Judiciary, and the Senate Judiciary Committee; and recommend any action or proposed legislation which the commission deems necessary or appropriate. Nothing contained in the commission's report shall be considered to authorize or require a change in any law without action by the General Assembly. The commission shall issue its first report on or before December 15, 2015, its second report on or before December 15, 2016, and thereafter at least every two years; and

(2) To evaluate and consider:

(A) Whether the compensation structure of this state is adequate to ensure that the most highly qualified attorneys in this state, drawn from diverse life and professional experiences, are not deterred from serving or continuing to serve in the state judiciary, as district attorneys, and as circuit public defenders and do not become demoralized during service because of compensation levels;

(B) The compensation paid as a county supplement to judges, district attorneys, circuit public defenders, and other staff associated with the courts;

(C) The caseload demands of judicial officers, prosecuting attorneys, and public defenders and the allocation of such officials, including staffing resources and jurisdictional structure;

(D) The skill and experience required of the particular judgeships or attorney positions at issue;

(E) The time required of the particular judgeships or attorney positions at issue;

(F) The value of compensable service performed by justices and judges, district attorneys, and circuit public defenders as determined by reference to compensation in other states and the federal government;

(G) The value of comparable service performed in the private sector, including private judging, arbitration, and mediation, based on the responsibility and discretion required in the particular judgeship at issue and the demand for those services in the private sector;

(H) The compensation of attorneys in the private sector;

(I) The Consumer Price Index and changes in such index;

(J) The overall compensation presently received by other public officials and employees; and

(K) Any other factors that are normally or traditionally taken into consideration in the determination of compensation.

(b) The commission shall have the following powers:

(1) To make findings, conclusions, and recommendations as to the proper salary and benefits for all justices and judges, district attorneys, and circuit public defenders of this state;

(2) To make findings, conclusions, and recommendations as to the efficient use of resources and caseload balance of the justice system in this state;

(3) To request and receive data from and review the records of appropriate state agencies, local governments, and courts to the greatest extent allowed by state and federal law;

(4) To accept public or private grants, devises, and bequests;

(5) To authorize entering into contracts or agreements through the commission's chairperson necessary or incidental to the performance of its duties;

(6) To establish rules and procedures for conducting the business of the commission; and

(7) To conduct studies, hold public meetings, collect data, or take any other action the commission deems necessary to fulfill its responsibilities.

(c) The commission shall be authorized to retain the services of attorneys, consultants, subject matter experts, economists, budget

analysts, data analysts, statisticians, and other individuals or organizations as determined appropriate by the commission. (Code 1981, § 15-22-4, enacted by Ga. L. 2015, p. 919, § 3-1/HB 279.)

15-22-5. Sunset.

This chapter shall be repealed effective June 30, 2020, unless continued in effect by the General Assembly prior to that date. (Code 1981, § 15-22-5, enacted by Ga. L. 2015, p. 919, § 3-1/HB 279.)

CHAPTER 23

COURT-CONNECTED ALTERNATIVE DISPUTE RESOLUTION

Sec.
15-23-1. Short title.
15-23-2. Definitions.
15-23-3. Board of Trustees of County Fund for the Administration of Alternative Dispute Resolution Programs.
15-23-4. Secretary-treasurers of boards; creation of office; duties.
15-23-5. Secretary-treasurers of boards; surety bonds.
15-23-6. Powers and duties of boards.
15-23-7. Additional costs in civil actions for purposes of providing court-connected or court-referred alternative dispute resolution programs.
15-23-8. Funds deposited into special account; expenditure and investment; audits.
15-23-9. Acceptance of things of value by board for holding or investment on behalf of program.
15-23-10. Determination of need as prerequisite to establishment of program.
15-23-11. Compensation of nonvolunteer neutrals by the parties.
15-23-12. Contracting by boards of several counties to combine funds; secretary-treasurer for combined fund; chairperson.

Cross references. — Referral in divorce actions to alternative dispute resolution, § 19-5-1.

Law reviews. — For note on 1993 enactment of this chapter, see 10 Ga. St. U.L. Rev. 91 (1993).

RESEARCH REFERENCES

ALR. — Alternative dispute resolution: sanctions for failure to participate in good faith in, or comply with agreement made in, mediation, 43 ALR5th 545.

15-23-1. Short title.

This chapter shall be known and may be cited as the "Georgia Court-connected Alternative Dispute Resolution Act." (Code 1981, § 15-23-1, enacted by Ga. L. 1993, p. 1529, § 1; Ga. L. 1997, p. 874, § 1.)

RESEARCH REFERENCES

Am. Jur. Trials. — Resolving Real Estate Disputes through Arbitration, 27 Am. Jur. Trials 621.

Alternative Dispute Resolution: Commercial Arbitration, 44 Am. Jur. Trials 507.

Alternative Dispute Resolution for Banks and Other Financial Institutions, 46 Am. Jur. Trials 231.

Alternative Dispute Resolution: Construction Industry, 52 Am. Jur. Trials 209.

The Use of Alternative Dispute Resolution in Intellectual Property, Technology-Related, or Innovation-Based Disputes, 55 Am. Jur. Trials 483.

Alternative Dispute Resolution: Employment Law, 57 Am. Jur. Trials 255.

Mediation as a Trial Alternative: Effec-

tive Use of ADR Rules, 57 Am. Jur Trials 555.

Trials Over Arbitration Clauses in Securities Broker Contracts, 61 Am. Jur. Trials 357.

Arbitration Evidence: Putting Your Best Foot Forward, 76 Am. Jur. Trials 1.

Arbitrating International Claims — At Home and Abroad, 81 Am. Jur. Trials 1.

Arbitration Highways to the Courthouse — A Litigator's Roadmap, 86 Am. Jur. Trials 111.

Resolving Real Estate Brokers' Disputes, 88 Am. Jur. Trials 321.

Arbitrating Securities Industry Disputes, 89 Am. Jur. Trials 55.

Appealing Adverse Arbitration Awards, 94 Am. Jur. Trials 211.

Construction Dispute Resolution — Arbitration and Beyond, 100 Am. Jur. Trials 45.

15-23-2. Definitions.

As used in this chapter, the term:

(1) "Alternative dispute resolution" or "ADR" refers to any method other than litigation for resolution of disputes. Alternative dispute resolution methods include mediation, arbitration, early case evaluation or early neutral evaluation, summary jury trial, and minitrial.

(2) "Board" means the board of trustees of a Fund for the Administration of Alternative Dispute Resolution Programs created by Code Section 15-23-3.

(3) "Fund" means one or more funds created pursuant to Code Section 15-23-8. (Code 1981, § 15-23-2, enacted by Ga. L. 1993, p. 1529, § 1.)

15-23-3. Board of Trustees of County Fund for the Administration of Alternative Dispute Resolution Programs.

(a) There is created in each county in this state a board to be known as the Board of Trustees of the _____ County Fund for the Administration of Alternative Dispute Resolution Programs. The board shall consist of:

(1) The chief judge of the superior court of the circuit in which the county is located, or the superior court judge with the longest service if there is no chief judge, or a superior court judge designated by the chief judge or the judge with the longest service;

(2) The chief judge of the state court, if any, or the state court judge with the longest service if there is no chief judge, or a state court judge designated by the chief judge or the judge with the longest service;

(3) The judge of the probate court;

(4) The presiding judge of the juvenile court, if any, or a juvenile court judge designated by that judge;

(5) The chief magistrate or a magistrate designated by the chief magistrate;

(6) The clerk of the superior court; and

(7) One practicing attorney appointed by other members of the board.

(b) The superior court judge on the board shall serve as chairperson of the board. The member who is the practicing attorney shall serve at the pleasure of the other members of the board. All members shall serve without compensation. A majority of the members of the board shall constitute a quorum for the transaction of all business that may come before the board.

(c) A member who represents a court which does not participate in the alternative dispute resolution program and against whose litigants the additional costs authorized by this chapter are not assessed may attend all meetings but will be a nonvoting member of the board. The presence of such a member shall not be counted in determining the constitution of a quorum.

(d) Members of any board of trustees of any county fund and other personnel acting in a policy-making capacity shall be immune from any action arising from any act, statement, decision, or omission relating to the implementation of the purposes of this chapter unless the act, statement, decision, or omission is:

(1) Grossly negligent and made with malice; or

(2) In willful disregard of the safety or property of any party to the alternative dispute process. (Code 1981, § 15-23-3, enacted by Ga. L. 1993, p. 1529, § 1; Ga. L. 1997, p. 874, § 2.)

15-23-4. Secretary-treasurers of boards; creation of office; duties.

There is created an office to be known as secretary-treasurer of the board of trustees of the County Fund for the Administration of Alternative Dispute Resolution Programs in each county. The secretary-treasurer shall be selected and appointed by the board and shall serve at the pleasure of the board. The board may appoint one of its own members as secretary-treasurer or, in its discretion, may designate some other person to act as secretary-treasurer of the board. The secretary-treasurer of the board shall perform the duties provided for the treasurer in this chapter. (Code 1981, § 15-23-4, enacted by Ga. L. 1993, p. 1529, § 1.)

15-23-5. Secretary-treasurers of boards; surety bonds.

The secretary-treasurer of the board shall give a good and sufficient surety bond, payable to the fund in such an amount as may be

determined by the board, to account faithfully for all funds received and disbursed by him or her. The premium on the bond shall be paid out of the fund in such county. A secretary-treasurer who is designated by a combined board of several counties as provided by Code Section 15-23-12 may satisfy the bonding requirement with one bond. If the secretary-treasurer is already bonded by virtue of being a state employee, such a bond as a state employee will satisfy the bonding requirement. (Code 1981, § 15-23-5, enacted by Ga. L. 1993, p. 1529, § 1; Ga. L. 1997, p. 874, § 3.)

15-23-6. Powers and duties of boards.

(a) The board is given the following powers and duties:

(1) To provide for the collection of all money provided for in this chapter;

(2) To manage, control, and direct such fund and the expenditures made therefrom;

(3) To distribute the moneys coming into the fund in such manner and subject to such terms and limitations as the board, in its discretion, shall determine will best meet the purpose of this chapter in promoting the alternative resolution of disputes and the efficient administration of justice;

(4) To contract for the investment, pooling, and expenditure of funds;

(5) To adopt such rules and regulations as may be necessary to manage such fund and provide for such programs;

(6) To keep records of all its meetings and proceedings; and

(7) To exercise all other powers necessary for the proper administration of the funding mechanism provided for in this chapter.

(b) In addition to the powers and duties listed in subsection (a) of this Code section, the board is authorized in its discretion to create a nonprofit corporation for the purpose of administering an alternative dispute resolution program and soliciting funding for such a program from any lawful source. The trustees or directors of any such nonprofit corporation shall be appointed by the board for terms not to exceed three years. (Code 1981, § 15-23-6, enacted by Ga. L. 1993, p. 1529, § 1; Ga. L. 1997, p. 874, § 4.)

15-23-7. Additional costs in civil actions for purposes of providing court-connected or court-referred alternative dispute resolution programs.

(a) For the purposes of providing court-connected or court-referred alternative dispute resolution programs, a sum not to exceed $10.00, in

addition to all other legal costs, may be charged and collected in each civil action or case filed in the superior, state, probate, and magistrate courts and other courts within the county that have the same powers and jurisdiction as state or magistrate courts.

(b) A case, within the meaning of this Code section, shall mean and be construed as any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned, whether such matter is contested or not.

(c) The amount, if any, to be collected in each case shall be fixed in an amount not to exceed the applicable amount set out in subsection (a) of this Code section by the chief judge of the superior court or, if there is no chief judge, by the superior court judge with the longest service, who shall, after advising and notifying the chairperson of the county governing authority, order the clerk to collect said fees and remit them to the treasurer of the county fund for the administration of alternative dispute resolution programs. No such additional costs shall be charged and collected unless the chief judge of the superior court or such chief judge's designee, or if there is no chief judge, the superior court judge with the longest service or such judge's designee first determines that a need exists for an alternative dispute resolution program in one or more of the courts within the county. The chief judge of the superior court or the designee of the chief judge or, if there is no chief judge, the superior court judge with the longest service or the designee of such judge may propose, as to a given court, the collection of an amount exceeding $7.00, but in no event to exceed the applicable amount set out in subsection (a) of this Code section; provided, however, that approval of the board member representing the affected court is necessary before imposition upon litigants of that court of costs authorized by this chapter exceeding $7.00.

(d) The clerk of each and every such court in such counties shall collect such fees and remit the same to the treasurer of the board of the county in which the case was brought, on the first day of each month. No change in the amount collected pursuant to this Code section may be made within a period of 12 months from the date of a previous change.

(e) Juvenile court supervision fees collected pursuant to Code Section 15-11-37 may be used for mediation services provided by court programs pursuant to this chapter. (Code 1981, § 15-23-7, enacted by Ga. L. 1993, p. 1529, § 1; Ga. L. 1997, p. 874, § 4; Ga. L. 1998, p. 128, § 15; Ga. L. 2000, p. 20, § 4; Ga. L. 2013, p. 294, § 4-5/HB 242; Ga. L. 2014, p. 166, § 1/HB 438.)

The 2013 amendment, effective January 1, 2014, substituted "Code Section 15-11-37" for "Code Section 15-11-71" in subsection (e). See editor's note for applicability.

The 2014 amendment, effective July

1, 2014, substituted "$10.00" for "$7.50" near the middle of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, a comma was deleted following "each case" in the first sentence of subsection (c).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

OPINIONS OF THE ATTORNEY GENERAL

Applicability of alternative dispute resolution fees to child support recovery actions. — Civil actions brought pursuant to the Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq., are subject to the fee imposed under O.C.G.A. § 15-23-7 to support alternative dispute resolution programs, but the state, the state's agencies, and political subdivisions should not be compelled to make advance payment of the fee which should ordinarily be collected from the child support obligor upon the conclusion of the action. 1994 Op. Att'y Gen. No. U94-7.

15-23-8. Funds deposited into special account; expenditure and investment; audits.

(a) The board shall have control of the funds provided for in this chapter. All funds received shall be deposited in a special account to be known as the _____ County Fund for the Administration of Alternative Dispute Resolution Programs. The board shall have authority to expend the funds in accordance with this chapter and to invest any of the funds so received in any investments which are legal investments for fiduciaries in this state.

(b) Boards shall comply with and be subject to the audit requirements of Code Section 36-81-7. (Code 1981, § 15-23-8, enacted by Ga. L. 1993, p. 1529, § 1; Ga. L. 1997, p. 874, § 4.)

15-23-9. Acceptance of things of value by board for holding or investment on behalf of program.

The board may take, by gift, grant, devise, or bequest, any money, real or personal property, or other thing of value and may hold or invest the same for the uses and purposes of the provision and operation of alternative dispute resolution programs. (Code 1981, § 15-23-9, enacted by Ga. L. 1993, p. 1529, § 1.)

15-23-10. Determination of need as prerequisite to establishment of program.

No alternative dispute resolution program shall be established for any court unless the judge or a majority of the judges of such court determine that there is a need for such program in that court. The funding mechanism set forth in this chapter shall be available to any court, including the juvenile court, which, having determined that a court-annexed or court-referred alternative dispute resolution program would make a positive contribution to the ends of justice in that court, has developed a program meeting the standards of the Supreme Court of Georgia Alternative Dispute Resolution Rules and appendices. Pursuant to the standards set forth in the Supreme Court of Georgia Alternative Dispute Resolution Rules and appendices, the funding mechanism set forth in this chapter shall be available to court programs in which cases are screened by the judge or by the program director under the supervision of the judge on a case-by-case basis to determine whether:

(1) The case is appropriate for the process;

(2) The parties are able to compensate the neutral if compensation is required; and

(3) A need for emergency relief makes referral inappropriate until the request for relief is heard by the court. (Code 1981, § 15-23-10, enacted by Ga. L. 1993, p. 1529, § 1; Ga. L. 1997, p. 874, § 5; Ga. L. 2013, p. 294, § 4-6/HB 242.)

The 2013 amendment, effective January 1, 2014, in the second sentence of the introductory language, inserted ", including the juvenile court," near the beginning and substituted "Supreme Court of Georgia Alternative Dispute Resolution Rules and appendices" for "Georgia Supreme Court's Uniform Rule for Alternative Dispute Resolution Programs" in the second and third sentences. See editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "case-by-case" was substituted for "case-by-base" at the end of the introductory paragraph.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

15-23-11. Compensation of nonvolunteer neutrals by the parties.

(a) Under guidelines promulgated by the Georgia Commission on Dispute Resolution, a court may set an hourly rate for compensation of nonvolunteer neutrals by the parties. Such costs shall be predicated upon the complexity of the litigation, the skill level needed by the neutral, and the litigants' ability to pay.

(b) Under guidelines promulgated by the Georgia Commission on Dispute Resolution, a court may set a user's fee for alternative dispute resolution processes. (Code 1981, § 15-23-11, enacted by Ga. L. 1993, p. 1529, § 1.)

15-23-12. Contracting by boards of several counties to combine funds; secretary-treasurer for combined fund; chairperson.

Notwithstanding any other provision of this chapter, the board of trustees of each county fund is authorized by contract to combine such fund with the fund of any other county or counties within the same judicial circuit, within the same administrative district, or in any other combination which would foster an efficient use of available resources. Any such combined fund created by any such contract shall be administered by a board of trustees which shall be composed of the judicial members and the clerks who are members of the boards of trustees of each participating county fund without the participating attorney members thereof but with one practicing attorney appointed by the members of the combined board. In the event two or more county funds are combined, the board of trustees of the combined fund may appoint a secretary-treasurer for the combined fund who shall perform such duties as may be provided by the combined board of trustees and who shall give bond in the same manner as provided by Code Section 15-23-5. The combined board shall be chaired by the chairperson of one of the constituent county boards elected by the combined board as provided by contract. In the event two or more boards combine as provided in this Code section, the judges of the courts within such combined territory are authorized to combine programs for such courts to provide for the most efficient use of available resources in providing alternative dispute resolution programs. (Code 1981, § 15-23-12, enacted by Ga. L. 1993, p. 1529, § 1.)

CHAPTER 24

SEXUAL ASSAULT PROTOCOL

Sec.
15-24-1. Definitions.
15-24-2. Establishment of sexual assault protocol and committee; representatives to committee; annual meeting and review.

Cross references. — Child abuse protocol committee, § 19-15-2. Sexual offenses, T. 16, C. 6.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Damages for Sexual Assault, 15 POF3d 259.

Am. Jur. Pleading and Practice Forms. — 2A Am. Jur. Pleading and Practice Forms, Assault and Battery § 140 et seq.

Am. Jur. 2d. — 6 Am. Jur. 2d., Assault and Battery, § 8.

C.J.S. — 6A C.J.S., Assault, §§ 75, 76.

15-24-1. Definitions.

As used in this chapter, the term:

(1) "Protocol committee" or "committee" means a multidisciplinary, multiagency sexual assault committee established for a county pursuant to Code Section 15-24-2. The protocol committee is charged with developing local protocols to investigate and prosecute alleged cases of sexual assault.

(2) "Sexual assault" means rape, sodomy, aggravated sodomy, incest, sexual battery, and aggravated sexual battery as those terms are defined in Chapter 6 of Title 16. (Code 1981, § 15-24-1, enacted by Ga. L. 2004, p. 466, § 3.)

15-24-2. Establishment of sexual assault protocol and committee; representatives to committee; annual meeting and review.

(a) Each judicial circuit shall be required to establish a sexual assault protocol as provided in this Code section.

(b) The chief superior court judge of each judicial circuit shall establish a sexual assault protocol committee as provided in subsection (c) of this Code section and shall appoint an interim chairperson who shall preside over the first meeting. The chief superior court judge shall

appoint persons to fill any vacancies on the committee. Thus established, the committee shall thereafter elect a chairperson from its membership.

(c)(1) Each of the following agencies of the judicial circuit shall designate a representative to serve on the committee:

(A) The office of the sheriff of each sheriff's office in the judicial circuit;

(B) The office of the district attorney;

(C) The magistrate court;

(D) The office of the chief of police of a county of each county within the judicial circuit in counties which have a county police department;

(E) The office of the chief of police of the largest municipality in the county of each county within the judicial circuit; and

(F) The county board of health of each county within the judicial circuit.

(2) In addition to the representatives serving on the committee as provided for in paragraph (1) of this subsection, the chief superior court judge shall designate:

(A) A local citizen of the judicial circuit;

(B) A representative of a sexual assault or rape crisis center serving the judicial circuit or, if no such center exists, then a local citizen; and

(C) A health care professional who performs sexual assault examinations within the judicial circuit or, if no such person exists, then a local citizen.

(3) If any designated agency fails to carry out its duties relating to participation on the committee, the chief superior court judge of the circuit may issue an order requiring the participation of such agency. Failure to comply with such order shall be cause for punishment as for contempt of court.

(d) The protocol committee shall adopt a written sexual assault protocol, a copy of which shall be furnished to each agency in the judicial circuit that handles cases of sexual assault. The protocol shall be a written document outlining in detail the procedures to be used in investigating, collecting evidence, paying for expenses related to evidence collection, and prosecuting cases arising from alleged sexual assault and shall take into consideration the provisions of Article 4 of Chapter 5 of Title 17. The protocol may provide for different procedures

to be used within particular municipalities or counties within the judicial circuit. The protocol committee shall adopt a written sexual assault protocol no later than December 31, 2004. The protocol committee may incorporate sexual assault protocols used in the judicial circuit as they existed on or before July 1, 2004.

(e) The purpose of the protocol shall be to ensure coordination and cooperation between all agencies involved in sexual assault cases so as to increase the efficiency of all agencies handling such cases and to minimize the stress created for the alleged sexual assault victim by the legal and investigatory process; provided, however, that a failure by an agency to follow the protocol shall not constitute an affirmative or other defense to prosecution of a sexual assault, preclude the admissibility of evidence, nor shall a failure by an agency to follow the protocol give rise to a civil cause of action.

(f) Upon completion of the writing of the sexual assault protocol, the protocol committee shall continue in existence and shall meet at least annually for the purpose of evaluating the effectiveness of the protocol and appropriately modifying and updating same. (Code 1981, § 15-24-2, enacted by Ga. L. 2004, p. 466, § 3; Ga. L. 2008, p. 486, § 1/HB 1297.)

Cross references. — Investigating sexual assault, T. 17, C. 5, A. 4. Reporting child abuse, § 19-7-5.

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Marijuana.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Schools and school areas.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
District attorney appointing assistant to prosecute violations.
Special drug prosecutor, §15-18-14.
Training requirement, §15-18-45.

DRUGS —Cont'd
Controlled substances —Cont'd
Drug-free commercial zone.
Manufacturing, distributing, dispensing, etc., within zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free school zones.
Signs posted.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Ecstasy.
Sale, possession or other offenses associated with MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Imitation controlled substances.
Unlawful manufacture, distribution, etc..
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Manufacture.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Cocaine.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Counterfeit substance.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Controlled substances —Cont'd
Manufacture —Cont'd
Drug-free commercial zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Imitation controlled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Marijuana.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methamphetamines.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methaqualone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Morphine, opium, etc..
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Schools and school areas.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Controlled substances —Cont'd
Minors.
Hiring, soliciting, etc., minor for purpose of manufacturing, distributing, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Unlawful manufacture, delivery, distribution, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Possession.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Counterfeit substance.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free commercial zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Imitation controlled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Marijuana.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Controlled substances —Cont'd
Possession —Cont'd
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Schools and school areas.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Sale.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Cocaine.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free commercial zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methamphetamines.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methaqualone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Morphine, opium, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Controlled substances —Cont'd
Schools.
Drug-free school zones.
Signs posted.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Manufacturing, distributing, possessing, etc., in, on or near schools.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Special drug prosecutor.
Appointment of assistant by district attorney, §15-18-14.
Training requirement, §15-18-45.
Counterfeit substances.
Controlled substances.
Possession, manufacture, distribution, etc..
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Manufacturing, distributing, etc., by park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Sale.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
County drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Delivery.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Cocaine.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
DRUGS —Cont'd
Delivery —Cont'd
Ecstasy.
Penalty for possession of MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Marijuana.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methamphetamines.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methaqualone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Morphine, opium, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Dispensing.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Counterfeit substances.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free commercial zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Dispensing —Cont'd
Marijuana.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Schools and school areas.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Distributing.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Counterfeit substances.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Ecstasy.
Penalty for possession of MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Imitation controlled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Marijuana.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Distributing —Cont'd
Schools and school areas.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
District attorney appointing assistant to prosecute violations.
Special drug prosecutor, §15-18-14.
Training requirement, §15-18-45.
Drug-free school zones.
Signs posted.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug related objects.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Ecstasy.
Sale, possession or other offenses associated with MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Ephedrine.
Possession of substances containing ephedrine over a certain amount.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Funds.
County drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Housing projects.
Manufacturing, distributing, etc., by housing projects.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Imitation controlled substances.
Unlawful manufacture, distribution, etc..
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Manufacture.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Cocaine.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Counterfeit substance.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free commercial zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Ecstasy.
Penalty for possession of MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Imitation controlled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Marijuana.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methamphetamines.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Manufacture —Cont'd
Methaqualone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Morphine, opium, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Schools and school areas.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Substances used for manufacture of schedule I or schedule II controlled substances.
Possession of substances with intent to use or convey for manufacture.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Marijuana.
County drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Driving under the influence.
Repeat offenders.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Serious injury by vehicle.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free commercial zone.
Manufacturing, dispensing, distributing, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Marijuana —Cont'd
Manufacturing, distributing, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free commercial zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Possession.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
School zones.
Manufacturing, distributing, dispensing or possessing in, on or near.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Trafficking in.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Marijuana-flavored products.
Selling or providing to minor.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methamphetamines.
Trafficking in.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Minors.
Hiring, soliciting, etc., minor for purpose of manufacturing, distributing, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
DRUGS —Cont'd
Noncontrolled substances.
Unlawful manufacture, delivery, distribution, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Parks.
Manufacturing, distributing, etc., by park.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Phenlypropanolamine.
Possession of substances containing more than a certain amount.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Possession.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Counterfeit substances.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free commercial zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Ecstasy.
Penalty for possession of MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Imitation controlled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Possession —Cont'd
Marijuana.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Schools and school areas.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Substances with intent to use or convey such substances for manufacture of schedule I or schedule II controlled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Pseudoephedrine.
Over the counter sales of products containing.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Possession of substances containing more than a certain amount.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Wholesale distributors.
License for sale, transfer or purchase for resale of products containing.
Required, exceptions, rules and regulations, denial, suspension or revocation.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Pseudoephedrine —Cont'd
Wholesale distributors —Cont'd
Reporting and recordkeeping requirements.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Violations, penalties.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Sale.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Cocaine.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Drug-free commercial zone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Ecstasy.
Penalty for possession of MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Marijuana.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
By park or housing project.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methamphetamines.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Methaqualone.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUGS —Cont'd
Sale —Cont'd
Morphine, opium, etc.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Noncontrolled substances.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Schools.
Drug-free school zones.
Signs posted.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Manufacturing, distributing, possessing, etc., in, on or near schools.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Special drug prosecutor.
Appointment of assistant by district attorney, §15-18-14.
Training requirement, §15-18-45.
Substances used for manufacture of schedule I or schedule II controlled substances.
Possession of substances with intent to use or convey for manufacture.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

DRUG TRAFFICKING.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.
Ecstasy.
Sale, possession or other offenses associated with MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

E

ECSTASY.
Sale, possession or other offenses associated with MDA or MDMA.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

ELECTIONS.
District attorneys.
Candidacy of district attorney performing ordered military duty, §15-18-4.1.
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Sheriffs.
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Driving under the influence.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

ENHANCED CRIMINAL PENALTIES.
Controlled substances.
Purchasing, possessing, etc., schedule I or schedule II substance.
Second or subsequent offense.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

EPHEDRINE.
Possession of substances containing ephedrine over a certain amount.
Additional fine, dedication to county drug abuse treatment and education fund, §§15-21-100, 15-21-101.

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District attorneys.
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Prima-facie evidence.
Coroners demanded to pay money to person entitled, §15-13-3.
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Prima-facie evidence of demand, §15-13-3.
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Prima-facie evidence of demand, §15-13-3.

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Court officers.
Contempt for improper return or failure to pay over money, §15-13-14.
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Sheriffs.
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Excessive fees, §15-13-32.
Demanding from criminal defendant, §15-13-35.
Receipt, §15-13-31.
State generally not charged, §15-13-30.
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Court officer demanding excessive fee from criminal defendant, §15-13-35.
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Court officer demanding from defendant in criminal case, §15-13-35.
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Sheriffs, §15-16-21.
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Excessive fees, §15-13-32.
Excessive fees demanding from criminal defendant, §15-13-35.
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Additional fee, §15-21A-6.
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State generally not charged, §15-13-30.
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Court officers to give, §15-13-31.
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Special criminal bailiffs, §15-12-6.
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Superior courts.
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